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levying sales tax.—The East Punjab General Sales Tax (Second Amendment) Act 19 of 1952 was passed after the enactment of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act 52 of 1952 and by virtue of section 3 of Act 52 of 1952 no tax could be imposed on edible oils by a State Legislature without obtaining the President's assent as required by Article 286(3). Notification No. 3483-E. & T.—54/723 (CH) dated the 5th August, 1954, by which certain dealers in edible oils were made liable to pay sales tax, was a law made by the State Legislature after the enactment of Act 52 of 1952 and as the notification did not receive the assent of the President as required by Article 286(3), it was *ultra vires* and invalid.—GANGA RAM SURAJ PARKASH v. THE STATE OF PUNJAB [1963] 14 S.T.C. 476 (Punj.).

Rajasthan — Essential goods—Imposition of sales tax—Whether imposition validated by Rajasthan Sales Tax (Validation) Act (50 of 1958).—The Rajasthan Sales Tax (Validation) Act, 1958, has validated for the period 1st April, 1956, to 5th January, 1957, both the imposition and the levy of taxes under the Rajasthan Sales Tax Act, 1954, as amended by the Rajasthan Sales Tax (Amendment) Act, 1956, on goods declared essential for the life of the community. Any defect for want of assent of the President in regard to the Amendment Act of 1956 was adequately cured by the Validation Act. The word "levy" is a compendious expression which implies the process of imposition, and collection also.—MANGAL SINGH AND OTHERS v. THE STATE OF RAJASTHAN AND ANOTHER [1962] 13 S.T.C. 801 (Raj.).

Travancore-Cochin—Scope of Article 286(3)—Validity of Travancore-Cochin Act.—The use of the words "as have been declared by Parliament" in Article 286(3) of the Constitution of India makes it clear that the enactments passed by the Legislature of a State which should be reserved for the consideration of the President and for the validity of which his assent is a condition precedent are only enactments made subsequent to the Central Act declaring the commodity concerned to be essential for the life of the community. The Travancore-Cochin General Sales Tax Act, 1125, is not an enactment made subsequent to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, and it is therefore unaffected by the requirements of Article 286(3) of the Constitution of India.—M. M. NAGALINGA NADAR AND SONS v. THE TRAVANCORE-COCHIN STATE [1954] 5 S.T.C. 301 (Trav.-Co.).

—Tax on jaggery.—Even on the assumption that jaggery and gur are identical, there is no declaration by Parliament by law of that commodity to be essential for the life of the community prior to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952). The declaration under section 2 of Act LII of 1952 will affect only enactments made after the commencement of that Act and not those made prior to it, like the Travancore-Cochin General Sales Tax Act, 1125. The Essential Supplies (Temporary Powers) Act (XXIV of 1946) is not an Act passed with a view to declare, in pursuance of clause (3) of Article 286 of the Constitution, any goods to be essential for the life of the community. The definition clause in Act XXIV of 1946 is not the same thing as the declaration contemplated by Article 286(3) of the Constitution.—C. CHERIAN KUNJU v. TRAVANCORE-COCHIN STATE AND OTHERS [1955] 6 S.T.C. 203 (Trav.-Co.).

Uttar Pradesh—Amending Act removing gur from the list of exempted goods—Effect—Act coming into force on a date prior to receiving assent of President—When gur becomes taxable.—SURAJ BHAN HARI SHANKER v. SALES TAX OFFICER [1962] 13 S.T.C. 409 (All.).

—See also RAM CHAND TEXTILES v. SALES TAX OFFICER, HATHRAS [1964] 15 S.T.C. 340 (All.) (F.B.) under COTTON.

MISCELLANEOUS

Articles of Constitution—Whether retrospective.—The Articles of the Constitution are not retrospective and they do not affect transactions which are past and closed or rights which have already vested or liabilities which have already accrued.—TATA IRON AND STEEL Co., LTD. v. THE STATE OF BIHAR [1956] 7 S.T.C. 158 (Pat.).

—The rule of interpretation that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation is applicable for the purpose of interpreting the Constitution of India. There is nothing in Article 286(1)(a) to indicate that it is retrospective and it is therefore not retrospective in operation.—NEMKUMAR KESRIMAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH [1955] 6 S.T.C. 222 (Nag.).

—Article 286 would not affect assessments relating to April, 1947, to May, 1949.—INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS [1955] 6 S.T.C. 47 (Mad.).

Assent to Act—Effect of introducing Bill in Legislature without previous sanction of Rajpramukh

but obtaining subsequent assent to Act.—In cases where the Constitution requires that a Bill cannot be moved or introduced in the Legislature without the recommendation or previous sanction of the President or the Governor or the Rajpramukh, the Act would not be invalid simply because such a recommendation or previous sanction was not made provided subsequent assent was given by that authority, whose recommendation or previous sanction was necessary, or by the higher authority, namely the President.—**BHAIRON DAN TOLARAM AND OTHERS v. STATE OF RAJASTHAN AND OTHERS** [1957] 8 S.T.C. 798 (Raj.).

—*Bullion and specie—Act imposing tax—No recommendation from Governor under Article 207—Subsequent assent of Governor—Validity of Act.*—Though there was no recommendation from the Governor for the imposition of tax on bullion and specie under the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955, as the assent of the Governor to the Amendment Act was published in the Calcutta Gazette, Extraordinary, on 19th September, 1955, the defect under Article 207 of the Constitution was cured and the Amendment Act could not be said to be an invalid piece of legislation.—**BALAI CHAND SEAL v. K. M. CHAKRAVARTI AND OTHERS** [1966] 17 S.T.C. 300 (Cal.).

Assent of the President—Tax on sale of goods is a matter entirely within entry 54 of State List and therefore an amendment to the definition of “dealer” in the Bihar Sales Tax Act, 1947, does not require the assent of the President.—**MOTIPUR ZAMINDARY CO. (PRIVATE) LTD. v. THE STATE OF BIHAR AND ANOTHER** [1962] 13 S.T.C. 1 (S.C.).

—The Andhra Pradesh General Sales Tax Act, 1957, was reserved for the assent of the President because there were certain provisions in it which dealt with subjects coming under the Concurrent List, but it did not follow from that that the Andhra Pradesh General Sales Tax (Second Amendment) Act (2 of 1959) should also be reserved for the assent of the President, though it did not affect in any way the free flow of trade or commerce. Therefore Act of 1959 did not become invalid for want of assent of the President.—**SRI DURGA RICE AND BABA OIL MILLS CO. AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS** [1964] 15 S.T.C. 676 (A.P.).

—*Amending Act removing gur from list of exempted goods—Effect.*—The U. P. Sales Tax (Amendment) Act, 1956, which removed *gur* from the list of commodities exempted from the

levy of sales tax and made *gur* taxable under the the U. P. Sales Tax Act, 1948, came into force on 1st April, 1956, but received the assent of the President only on 9th May, 1956. The assessee contended that so far as *gur* was concerned, the Act could have effect only from 9th May, 1956: *Held*, that the date of the assent of the President as required by Article 286(3) of the Constitution had nothing whatsoever to do with the date of coming into force of the Act. The Act would operate from the date mentioned in it as the date of its operation and therefore *gur* became taxable from 1st April, 1956, and not from 9th May, 1956. The deletion of *gur* from section 4 had the result of making *gur* a taxable commodity under the U. P. Sales Tax Act, 1948, and the deletion had the assent of the President under Article 286(3) of the Constitution. This was quite sufficient to make *gur* taxable and there was no necessity to make a specific provision in the charging section or in a notification issued under the charging section making *gur* a taxable commodity.—**SURAJ BHAN HARI SHANKER v. THE SALES TAX OFFICER, II AGRA, AND ANOTHER** [1962] 13 S.T.C. 409 (All.).

Composite assessments—Assessment for post-Constitution and pre-Constitution periods—Assessment for one period held to be illegal—Whether entire assessment should be set aside.—See **PROVINCIAL GOVERNMENT OF MADRAS v. J. S. BASAPPA** [1964] 15 S.T.C. 144 (S.C.); **RAM NARAIN SONS LTD. v. ASSISTANT COMMISSIONER OF SALES TAX** [1955] 6 S.T.C. 627 (S.C.); **STATE OF JAMMU AND KASHMIR v. CALTEX (INDIA) LTD.** [1966] 17 S.T.C. 612 (S.C.) and **THE STATE OF RAJASTHAN AND ANOTHER v. KARAM CHAND THAPPAR AND BROTHERS (COAL SALES) LTD.** [1969] 23 S.T.C. 210 (S.C.).

Deductions—Manufacturer of groundnut oil—Purchase turnover assessed to tax—Sale of oil outside State—Claim for rebate of tax on purchase turnover under rule 18(2), Madras General Sales Tax (Turnover and Assessment) Rules, 1939.—**SRI CHANDRAMOULESWARA OIL CO., KURNOOL, In re** [1954] 5 S.T.C. 340 (Mad.).

—Manufacture and sale of groundnut oil—Purchase of groundnut outside State—Claim to deduct purchase price of groundnut from sale price of oil—Legality—Scheme of taxation.—**SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS (NOW ANDHRA)** [1954] 5 S.T.C. 357 (Mad.).

—Manufacturer of groundnut oil—Sale of oil outside State and therefore exempt from taxation—Right to deduction under rule 18(2), Turnover and Assessment rules—Scope of rule 18(2).—

K. G. RANGASWAMI CHETTIAR AND CO. v. THE GOVERNMENT OF MADRAS [1957] 8 S.T.C. 222 (Mad.).

—Registered manufacturer of coconut oil—Sale of oil outside State—Right to deduction under rule 7(1)(k) read with rule 20 of the Travancore-Cochin General Sales Tax Rules, 1950—Whether rules denying deduction violate Articles 301 and 303(1) of the Constitution of India.—A. V. FERNANDEZ v. THE STATE OF TRAVANCORE-COCHIN [1955] 6 S.T.C. 22 (Trav.-Co.).

—Registered manufacturer of coconut oil—Sale of oil outside State—Right to deduction under rule 7(1)(k) read with rule 20, Travancore-Cochin General Sales Tax Rules, 1950—Exemption from tax and non-liability to tax—Distinction—Nature of sales falling under section 26, Travancore-Cochin General Sales Tax Act, 1125.—A. V. FERNANDEZ v. THE STATE OF KERALA [1957] 8 S.T.C. 561 (S.C.).

—*Manufacturer of cocount oil—Sale of oil and cake within State and in the course of inter-State trade—Method of assessment.*—The assessee, a manufacturer of coconut oil, purchased both imported and local copra. There was no dispute as regards the exemption from tax of a portion of the oil and cake produced in the mill and sold in inter-State trade and the portion of the oil used for the manufacture of soap in the assessee's soap works. The question was whether the value of oil and cake sold within the State did not attract tax by virtue of a notification dated 25th March, 1958, issued under section 6 of the General Sales Tax Act, 1125: *Held*, (1) that so long as the assessee effected the purchase of 316 coconuts or 100 pounds of copra and the purchase was assessed or was liable to assessment under the Act, he would be entitled to a deduction to the extent of that assessment or liability to assessment from the tax due under the Act on the sale of 62.5 pounds of oil and 37.5 pounds of cake; (2) that as the assessee had purchased a quantity of local copra sufficient to produce the oil and cake sold within the State, he was only entitled to an exemption to the extent provided by the notification from the tax due on the value of oil and cake sold within the State.—THE MALABAR OIL MILLS, VALAPAD v. THE STATE OF KERALA [1963] 14 S.T.C. 106 (Ker.).

Federal financial integration—Agreement between Union and Travancore-Cochin State in the matter of federal financial integration in that State—Whether abrogates Articles 277 and 372.—SOUTH INDIA CORPORATION v. SECRETARY, BOARD OF REVENUE [1964] 15 S.T.C. 74 (S.C.).

Inter-State sales—Collection of tax from purchasers—Whether should be paid to Government.—See SALES TAX.

—*Collection of sales tax on outside State sales—Legality of order of forfeiture passed by officer—Section authorising forfeiture retrospectively—Validity.*—The amendment to section 14A of the Bihar Sales Tax Act, 1947, by Bihar Act IV of 1955, in so far as it enacts penalty of forfeiture retrospective in operation, is unconstitutional since it contravenes Article 20(1) of the Constitution. The expression "forfeiture" in the proviso to section 14A is tantamount to a penalty within the meaning of Article 20(1). Even assuming that the proviso to section 14A does not impose a penalty, the legislation would be hit by Article 31(2) and would still be unconstitutional and void.—RAI BAHADUR HURDUT ROY MOTI LALL JUTE MILLS v. THE STATE OF BIHAR AND ANOTHER [1956] 7 S.T.C. 609 (Pat.) affirmed by Supreme Court on different grounds. See below.

—*Collection of sales tax by dealer on sales outside State.*—During the period 1st April, 1950, to 31st March, 1951, the assessee, a dealer registered under the Bihar Sales Act, 1947, sold and despatched goods to dealers outside the State of Bihar and realised from them sales tax on such transactions. Subsequently the Supreme Court held in the *The State of Bombay v. United Motors (India) Ltd.* ([1953] 4 S.T.C. 133; [1953] S.C.R. 1069) that such sales were not liable to sales tax. The Superintendent of Sales Tax did not assess the assessee on such sales, but ordered that the amount realised by the assessee from the customers as sales tax should be forfeited to the Government under the proviso to section 14A. The High Court set aside the order of forfeiture on the ground that the proviso to section 14A violated either Article 20(1) or Article 31(2) of the Constitution. On appeal to the Supreme Court by the State of Bihar against the decision of the High Court counsel for the assessee pressed as a preliminary point his argument that the proviso could not be applied to the case of the assessee: *Held*, that the proviso to section 14A could not be invoked against the assessee and so the order of forfeiture passed against the assessee by the Superintendent of Sales Tax was unjustified and illegal. [The Supreme Court did not find it necessary to consider the validity of the proviso to section 14A on the ground that it contravenes Articles 20(1) and 31(2) of the Constitution.] Decision of the Patna High Court in *Rai Bahadur Hurdut Roy Moti Lall Jute Mills v. The State of Bihar and Another* [1956] (7 S.T.C. 609) affirmed on different grounds.—STATE OF

BIHAR v. RAI BAHADUR HURDUT ROY MOTI LALL JUTE MILLS [1960] 11 S.T.C. 17 (S.C.).

Joint petition under Article 226 assailing assessments of more than one year—If a joint petition under Article 226 of the Constitution assailing the assessments of more than one year has been admitted, it will not be proper or just to throw it out as incompetent particularly when the grounds of challenge are exactly similar.—**MADAN MOHAN AND ANOTHER v. THE DISTRICT EXCISE AND TAXATION OFFICER, BHATINDA** [1964] 15 S.T.C. 648 (Punj.).

"Levy", "collection" in Art. 265, meaning of—The words "levy" and "collection" are used in Article 265 of the Constitution of India in a comprehensive manner and they are intended to include and envelop the entire process of taxation commencing from the taxing statute to the taking away of the money from the pocket of the citizen. Article 265 enjoins that every stage in this entire process must be authorised by the law.—**RAYALSEEMA CONSTRUCTIONS v. DEPUTY COMMERCIAL TAX OFFICER** [1959] 10 S.T.C. 345 (Mad.) affirmed in [1966] 17 S.T.C. 505 (S.C.).

Law in force in Article 372, meaning of—The definition of "law in force" in Article 372 of the Constitution gave importance to the passing or making of the Act rather than its operativeness either at all or in particular areas.—**SUBHODAYA CORPORATION, TRIVANDRUM v. SALES TAX OFFICER AND ANOTHER** [1959] 10 S.T.C. 356 (Ker.).

Offences—Purchases for purposes of export—Assessment to sales tax—Prosecution for non-payment of tax—Conviction—Subsequent acquittal by High Court on ground that section 16A which prevented accused from pleading in defence exemption under Article 286(1)(b) was *ultra vires* Legislature—Whether acquittal proper—**Madras General Sales Tax Act (IX of 1939), Secs. 15(b), 16A.—Constitution of India, Article 286(1)(b).**—**THE STATE OF MADRAS v. GURVIAH NAIDU & Co. LTD. AND OTHERS** [1955] 6 S.T.C. 717 (S.C.).

Proclamation of emergency—Whether fundamental rights can be enforced.—A person cannot complain of any violation of Article 19 while a proclamation of emergency under Article 358 is in operation.—**SWADESHI COTTON MILLS v. SALES TAX OFFICER** [1964] 15 S.T.C. 505 (All.).

Scope of Articles 301 and 304—Article 301 of the Constitution of India prohibits barriers of any kind which would stand in the way of free inter-State trade and commerce. Barriers can take various forms. There may be direct legislation prohibiting or restricting entry of goods

from other States. Indirect barriers can also be created by taxation. While Article 303 relates to the former category, Article 304 relates to the latter. The words "manufactured or produced" in Article 304(a) exhaust all categories of goods that can be found in a State other than the goods imported and should be understood as contra-distinguished from goods imported from outside the State. They cannot be limited to goods in respect of which excise duty can be levied. The term "any tax" is a term of wide import, not confined to excise duty alone.—**P. ABDUL SUBHAN & Co. v. STATE OF MADRAS** [1960] 11 S.T.C. 173 (Mad.).

Scope of Article 304(b)—Only taxes which hamper the freedom of trade or commerce that are attracted by the proviso to Article 304(b). A tax on the sale or purchase of goods does not interfere with the flow of trade, commerce or inter-course. Taxes which are levied for augmenting the revenues of the State cannot come within the ambit of clause (b), unless it is shown that they directly affect the trade or commerce. If they impinge indirectly or remotely, it will not come within the mischief of clause (b).—**SRI DURGA RICE AND BABA MILLS Co., AND OTHERS v. STATE OF ANDHRA PRADESH AND OTHERS** [1964] 15 S.T.C. 676 (A.P.).

Article 261—It is a fundamental canon of law that whilst it is possible for both the Centre and the State to interpret upon and explain certain words or expressions used in taxing statutes amongst others, a certain uniformity should prevail in order to avert inconvenience and harassment resulting to the persons affected by such an interpretation or ruling. Article 261 of the Constitution of India is a pointer to this effect and provides that full faith and credit shall be given throughout the territory of India to public acts of the Union and of every State.—**KISHINCHAND CHELLARAM AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, CHINTADRI PET DIVISION, MADRAS-2, AND OTHERS** [1968] 21 S.T.C. 367 (Mad.).

Suit—Payment of tax on inter-State sales—Subsequent suit for refund of such tax.—See **SALES TAX**.

Validity of State Act—State whether should be impleaded as party.—An assessee challenging the validity of an Act of the State Legislature under Article 226 has to be implead the State as a party to the writ petition.—**SWADESHI COTTON MILLS v. SALES TAX OFFICER** [1964] 15 S.T.C. 505 (All.).

Vires of statutory provisions—In cases where the *vires* of statutory provisions are challenged

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on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the *vires* of the said provisions and any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance.—*STATE OF BIHAR v. RAI BAHADUR HARDUT ROY MOTI LALL JUTE MILLS* [1960] 11 S.T.C. 17 (S.C.).

“Goods”—*Whether includes copyright*—*Whether definition of goods in Madras General Sales Tax Act, 1959, goes beyond definition in Constitution of India.*—Copyright is incorporeal movable property and the expression “all kinds of movable property” in the definition of “goods” in the Madras General Sales Tax Act, 1959, would necessarily take within its sweep even intangible or incorporeal movable property. The expression “goods” has not been defined in Article 311 of the Constitution of India in an exhaustive manner. It may be that in so far as incorporeal movable property is concerned, there might be difficulties in levying the appropriate tax, such as those contemplated in entry 30, 84 or 89 of List I or entry 51, 52 or 56 of List II of the Seventh Schedule of the Constitution. But that cannot control the definition of “goods” in any way. Notwithstanding the fact that the expressions employed in defining “goods” embody only the natural sense of the word, it cannot be held that “goods” has been restrictively defined in the Constitution to comprise only materials, commodities and articles, that is to say, concrete goods. Therefore the definition of “goods” in the Madras General Sales Tax Act, 1959, as meaning all kinds of movable property, does not go beyond the meaning given to that expression in the Constitution.—*A. V. MEIYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS, AND ANOTHER* [1967] 20 S.T.C. 115 (Mad.).

High Court—*Powers under Article 226, Constitution of India*—*Government order granting tax relief on certain inter-State transactions validated by Sales Tax Laws Validation Ordinance, 1956—Refusal of subordinate authorities to consider claim to relief—Power of High Court to issue direction.*—Where a public authority has been directed by a superior authority to perform a particular act, the refusal by that public authority to perform that act is capable of correction in the writ jurisdiction of

the High Court under Article 226 of the Constitution. After the decision of the Supreme Court in the *Bengal Immunity Co. Ltd. v. The State of Bihar* [1955] (6 S.T.C. 446), and the promulgation of the Sales Tax Laws Validation Ordinance, 1956, the Government of Madras issued an order stating that except in the case of non-resident dealers who had not collected sales tax from their constituents on inter-State transactions validated by the Ordinance or who had collected it and subsequently refunded it to their constituents, action should be taken to assess and collect such tax. The petitioners who were non-resident dealers claimed that they had refunded to their constituents the sales tax collected by them but the Appellate Assistant Commissioner did not accept the evidence and the Tribunal declined to interfere with the orders passed on the ground that the Tribunal could not enforce compliance with administrative directions. When the petitioners sought to obtain relief from the Board of Revenue the Board rejected their request. The petitioners thereupon filed an application under Article 226 of the Constitution: *Held*, that the High Court could issue a direction to the Sales Tax Authorities to give effect to the provisions of the Government Order, that there was no disposal on merits at any stage of the proceedings of the question raised by the petitioners and that it was the duty of the appropriate authorities, including the Appellate Assistant Commissioner, to examine the evidence tendered by the petitioners in this regard.—*BANDA BROTHERS v. THE BOARD OF REVENUE, MADRAS* [1965] 16 S.T.C. 664 (Mad.).

Appeal to Supreme Court—*Building contracts—Decision of High Court declaring provision ultra vires the Constitution—Appeal to Supreme Court against decision—Jurisdiction of authorities to make assessment under that provision pending decision.*—The law declared by the High Court in the State is binding on the authorities or tribunals under its superintendence and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. The petitioners carrying on the business of structural contractors and builders were assessed to sales tax under rule 2(2) of the Bengal Sales Tax Rules, 1941, long after that rule was struck down by the Calcutta High Court as illegal and *ultra vires* the Constitution of India in *Dukhineswar Sarkar & Bros. Ltd. v. Commercial Tax Officer and Others* [1957] (8 S.T.C. 478). The appeal preferred by the State Government against this decision was however then pending before the Supreme Court. The Commercial Tax Officer gave the option to the petitioners to pray for stay of the dues till the appeal was decided by the

Supreme Court. The Supreme Court subsequently upheld the decision of the High Court, but the Commercial Tax Officer took no notice of that decision. The petitioners' appeal and revision for relief were dismissed on the ground of delay. The petitioners then filed a petition under Article 226 of the Constitution, but SINHA, J., also rejected the petition on the ground that the petitioners' right of appeal or revision in the Courts below had been barred by limitation. On appeal: *Held*, that after rule 2(2) had been declared *ultra vires* and illegal by the High Court, that rule could no longer be described as law and it could not be invoked either for the levy of any tax or for the collection of any tax. Therefore the application under Article 226 should not have been dismissed. The Commercial Tax Officer should have passed an order in favour of the petitioners and if the State Government wanted to have an opportunity for assessing the petitioners after the decision of its appeal before the Supreme Court, it was for the State Government to make an appeal against the order of the Commercial Tax Officer.—DINESH CHANDRA BHATTACHARYYA AND OTHERS *v.* MEMBER, BOARD OF REVENUE, WEST BENGAL, AND OTHERS [1967] 19 S.T.C. 224 (Cal.).

—*Decision of High Court declaring certain provisions of Central Sales Tax Act, 1956, unconstitutional—Stay order obtained from Supreme Court operating only as between parties to appeal—Effect of decision of High Court on other assesseees.*—When on a writ petition filed under Article 226 of the Constitution, certain sections of the Central Sales Tax Act, 1956, were declared unconstitutional by the High Court and thereupon the State appealed to the Supreme Court and obtained from the Supreme Court a stay order, which operated only as between the parties to the stay petition and the appeal, the decision of the High Court, till it is reversed, has to be given effect to and must be followed by the revenue in the State with respect to assesseees or parties other than those in the appeal pending in the Supreme Court. *Larsen and Toubro Limited v. Joint Commercial Tax Officer* [1967] (20 S.T.C. 150) referred to.—GARLICK AND COMPANY PRIVATE LIMITED, MADRAS-2 *v.* JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2 [1968] 22 S.T.C. 209 (Mad.).

CONSTRUCTION OF STATUTES

Construction of Statutes.—It is one of the canons of interpretation that when too literal an adherence to the words of a statute leads to

absurdity it is open to a Court to so interpret the statute as will obviate an absurd result. In such a case it is also open to the Court to give a restricted meaning to the words used in a statutory provision so as to give it a reasonable effect.—MUDHOLKAR, J., in *AYODHYAPRASAD SUKLAL v. THE CROWN* [1951] 2 S.T.C. 44 (Nag.).

—If the terms of the section are plain and unambiguous, the Court cannot resort to the position in law as it obtained in England or in other countries when the statute was enacted by the Legislature. Such recourse would be permissible only if there was any latent or patent ambiguity and the Courts were required to find out what was the true intendment of the Legislature. Where, however, the terms of the statute do not admit of any such ambiguity, it is the clear duty of the Courts to construe the plain terms of the statute and give them their legal effect.—THE SALES TAX OFFICER, BANARAS, AND OTHERS *v.* KANHAIYA LAL MUKUND LAL SARAF AND OTHERS [1958] 9 S.T.C. 747 (S.C.).

—It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.—NEW INDIA SUGAR MILLS LTD. *v.* COMMISSIONER OF SALES TAX, BIHAR [1963] 14 S.T.C. 316 (S.C.).

—Mere hardships which crop up in applying a rule cannot stand in the way of correct construction of the rule. Further, anything which the language of the rule itself cannot convey should not be imported into it, merely on the ground that either a lacuna exist or a hardship is caused in giving effect to the rule as it stands.—STATE OF ANDHRA PRADESH *v.* VAUHINI PICTURES (P) LTD. [1962] 13 S.T.C. 847 (A.P.).

—If two interpretations are possible, the one that would be in consonance with the object of the legislation should be accepted and Courts should lean towards a construction which avoids inconvenience and injustice to parties. But when the words of an enactment are unambiguous and clear and are not capable of two interpretations, a Court cannot put an unwarranted interpretation merely to enable a litigant to escape from an inconvenient position.—

SINGARENI COLLIERIES CO. LTD. *v.* COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD [1961] 12 S.T.C. 838 (A.P.) reversed in [1966] 17 S.T.C. 197 (S.C.).

—If a provision is capable of two constructions, that which is in consonance with its constitutionality should be adopted in preference to that which results in its being struck down as *ultra vires* or unconstitutional.—THE STATE OF ANDHRA PRADESH *v.* T. R. SOMARAJU AND OTHERS [1965] 16 S.T.C. 177 (A.P.).

—When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.—STATE OF GUJARAT *v.* RAMANLAL SANKALCHAND AND CO. [1965] 16 S.T.C. 329 (Guj.).

—It is a well-settled rule of construction that where it can be gathered from a later Act that the Legislature has attached a particular meaning to certain words in an earlier cognate one this would be taken as a legislative declaration of its meaning there. Subsequent legislation on the same subject where there is ambiguity may be looked into in order to see what is the proper construction to be put upon an earlier Act.—STATE OF GUJARAT *v.* KESHAVLAL AND SONS [1966] 17 S.T.C. 170 (Guj.).

—It is a well-settled rule of construction that there should be a harmonious reading of all the provisions of the statute and no provision should be rendered as serving no purpose, as a result of giving a wide construction to some other provision. Every effort should be made to secure a harmonious reading and construction of the several sections of the Act as a whole.—F. K. HASHEEB & CO. *v.* THE STATE OF MADRAS [1966] 17 S.T.C. 38 (Mad.).

—An Act of the Legislature is intended to be fairly workable and in the absence of a statutory provision or a compelling reason Courts should always lean to interpret a statute in such a manner as to achieve and secure its object.—OM PARKASH RAJINDER KUMAR *v.* SHRI K. K. OPAL, EXCISE AND TAXATION OFFICER (ENFORCEMENT), AMRITSAR [1967] 19 S.T.C. 153 (Punj.) (F.B.).

—A prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one.—GIRJA SHANKER DUBEY *v.*

COMMISSIONER OF SALES TAX [1968] 21 S.T.C. 127 (All.).

—*Amending provision.*—In construing an enactment, particularly an amending provision, it is permissible to have regard, and sometimes it may be necessary to do so, to the history of the amendment and the reasons which led to its enactment. It would then be pertinent to see what was the evil or mischief that existed before and had to be cured, and how the cure or remedy has been provided.—BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LIMITED, MADRAS-1, AND OTHERS *v.* THE STATE OF MADRAS [1968] 21 S.T.C. 227 (Mad.).

Title and preamble.—It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. The title and preamble, whatever their value might be as aids to the construction of a statute, undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself.—POPPATLAL SHAH *v.* THE STATE OF MADRAS [1953] 4 S.T.C. 188 (S.C.).

Definitions.—Even where an Act contains a definition section it does not necessarily apply in all the contexts in which a defined word may be found. If a defined expression is used in a context which the definition will not fit, the context must be allowed to prevail over the artificial conceptions of the definition clause, and the word must be given its ordinary meaning.—MAHOMED TAYOOB DARUWALA *v.* STATE OF BOMBAY [1960] 11 S.T.C. 612 (Bom.).

Expressions used in Constitution.—There having existed at the time of the enactment of the Government of India Act, 1935, a well-defined and well-established distinction between a sale and an agreement to sell, it would be proper to interpret the expression "sale of goods" in entry 48 in List II of the Seventh Schedule to the Government of India Act, 1935, in the sense in which it was used in legislation both in England and India and to hold that it authorises the imposition of a tax only when there is a completed sale involving transfer of title.—SALES TAX OFFICER, PILIBHIT *v.* BUDH PRAKASH JAI PRAKASH [1954] 5 S.T.C. 193 (S.C.).

—In GANNON DUNKERLEY & CO. (MADRAS) LTD. *v.* THE STATE OF MADRAS [1954] 5 S.T.C. 216, Satyanarayana Rao, J., after considering the rules laid down by Gwyer, C.J., in *C.P. and Berar*

Sales of Motor Spirit and Lubricants Taxation Act, 1938, In re [1939] (1 S.T.C. 1). Crawford on Construction of Statutes, pages 738, 758 and 420 and *Weaver on Constitutional Law*, page 77, observed at page 226 as follows:—"Bearing these principles in mind, we have to construe the relevant entry, item 48 of List II of Schedule VII, and give effect to the plain words employed in the expression 'taxes on the sale of goods'. It must be remembered that the Constitution Act was enacted by the British Parliament and the draftsmen and the Parliament must have been well aware that the expression 'sale of goods' had acquired a legal import by that time, and it is legitimate therefore to presume that the expression was used in the sense in which it was understood by English lawyers and also in India. The draftsmen must have intended to define the power of the Legislature to tax only the transaction of sale of goods, which was understood in law as meaning and as constituting those composite series of acts beginning with an agreement of sale and ending with transfer of property for a price, which constitute sale of goods. That the expression sale of goods acquired a definite meaning in England under the Sale of Goods Act, 1893, and in India under the Sale of Goods Act, 1930, which was modelled on the English Act, does not admit of serious doubt." This decision on appeal was affirmed by the Supreme Court in [1958] 9 S.T.C. 353.

—In order to determine the sense in which a word or expression has been used in a Constitution, legislative practice is helpful within limits, but not conclusive. Judicial interpretation of words and expressions is not necessarily conclusive unless those decisions are well-known and the Legislature is legislating upon the same matter, for the same purpose and for the same object.—*PANDIT BANARSI DAS v. THE STATE OF MADHYA PRADESH AND OTHERS* [1955] 6 S.T.C. 93 (Nag.). This decision was reversed by the Supreme Court in [1958] 9 S.T.C. 388.

—Where the words or expressions used in a legislative list have to be construed the rule of construction of *pari materia* statutes is not strictly applicable nor is it a conclusive or infallible test. The Court must in such circumstances try to ascertain the scope and ambit of the power intended to be conferred by the entry and consequently, though the Court may resort to judicial pronouncements and legislative practice prevailing at the time when the Constitution was promulgated, the intention of the framers of the Constitution must be ascertained by reference to the plain meaning of the words and expressions used in it. But if the words or

expressions have acquired legal currency and have been given a definite meaning in legal parlance it is safe to presume that the draftsmen or the framers could not but have intended to use them in the same sense. It is not easy to break away from the legal conceptions or meaning of certain legal phrases which are well-known under the law existing at the time when the Constitution was promulgated. All things being equal, it is permissible to have recourse to the state of law as it existed at the time of the Constitution for purposes of determining the meaning of any expression used in any of the entries of the legislative list.—*JUBILEE ENGINEERING CO., LTD. v. SALES TAX OFFICER, HYDERABAD CITY, AND OTHERS* [1956] 7 S.T.C. 423 (Hyd.).

—It is a generally accepted principle of constitutional interpretation that in interpreting a constituent and organic statute that construction most beneficial to the widest amplitude of the power of the Legislature must be adopted. But even applying this principle it could not be said that the expression "sale" in the Constitution was meant to designate a transaction which in the ordinary acceptation of the term would not amount to a "sale". It might very well be that the nice distinctions between a sale and an exchange might not apply to determine the scope of the expression in the Constitution. But that apart, when the Constitution confers a power with reference to a specified transaction which has well-known incidents, it would not be interpretation but legislation to hold that within that power was included that transaction as well as others, which in essence were entirely distinct from it and created between the parties to it, not the relation of buyer and seller but quite different one, of bailor and bailee.—*COMMERCIAL CREDIT CORPORATION (1943) LTD. v. DEPUTY COMMERCIAL TAX OFFICE, MOUNT ROAD, MADRAS* [1958] 9 S.T.C. 599 (Mad.) partly reversed in [1965] 16 S.T.C. 213 (S.C.).

—See also the decision of the Supreme Court in *THE STATE OF MADRAS v. GANNON DUNKERLEY & CO. (MADRAS) LTD.* [1958] 9 S.T.C. 353 (S.C.).

—The well-accepted canon of construction of enumerated powers of Legislature is that the words describing the legislative powers should receive a wide and liberal meaning, and blind adherence to a strictly verbal interpretation must be avoided. The enumerated powers must be effectively put in operation by legislation. An impotent piece of legislation, while it may adorn the Statute Book, is as good as not having been enacted at all. The doctrine of incidental and ancillary power has necessarily to be invoked to prevent a statute becoming effete. In a statute

falling within the enumerated topic of legislation, provisions enacted to ensure and achieve the effectiveness of the Act should not be treated as alien to the subject-matter of the legislation. The competency of the Legislature to make such provisions cannot be tested as if they stand apart and are severable from the main enactment. A matter not otherwise within the enumerated powers may be legislated upon as an incident to the exercise of an enumerated power.—*INDIAN ALUMINIUM CO. v. STATE OF MADRAS* [1962] 13 S.T.C. 967 (Mad.).

—The fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing. Raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they are different goods.—*A HAJEE ABDUL SHUKOOR AND CO. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 719 (S.C.).

Interpretation of Constitution—Value of foreign decisions.—The decisions of Canadian and Australian Courts are not binding upon the Court, and still less those of the United States, but, where they are relevant, they will always be listened to with attention and respect, as the judgments of eminent men accustomed to expound and illumine the principles of a jurisprudence similar to our own: and if the Court is so fortunate as to find itself in agreement with them, it will deem its own opinion to be strengthened and confirmed. But there are few subjects on which the decisions of other Courts require to be treated with greater caution than that of federal and provincial powers, for, in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting; and since no two Constitutions are in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases, for a word or a phrase may take a colour from its context and bear different senses accordingly.—*THE CENTRAL PROVINCES AND BERAR SALES OF MOTOR SPIRIT AND LUBRICANTS TAXATION ACT, 1938, In re* [1938] 1 S.T.C. 1 (F.C.).

—It is natural when considering the ambit of an express power in relation to an unspecified residuary power, to give a broad interpretation to the former at the expense of the latter but

where, as in the Indian Constitution Act, there are two complementary powers each expressed in precise and definite terms there can be no reason for giving a broader interpretation to one power rather than to the other. The American and Australian decisions should not therefore be blindly adopted in India.—*THE PROVINCE OF MADRAS v. BODDU PAIDANNA AND SONS* [1942] 1 S.T.C. 104 (F.C.).

—The commerce clause and the import export clause of the American Constitution are widely different in language, scope and purpose, and a varying body of doctrines and tests have grown around them interpreting, extending or restricting, from time to time, their operation and application in the context of the expanding American commerce and industry. Much help cannot be derived from them in the solution of the problems arising under Article 286 of the Indian Constitution.—*THE STATE OF TRAVANCORE-COCHIN AND OTHERS v. THE BOMBAY COMPANY LTD., ALLEPPEY, AND OTHERS* [1952] 3 S.T.C. 434 (S.C.).

—The Explanation to Article 286(1) applies only when the goods are actually delivered for the purpose of consumption in the State. It corresponds to what is called in American legislation a "use tax". As regards the legislative authority of the State to impose such a tax, the constitutional position in America is different and the American decisions are not of much assistance. For the commerce clause has been utilised as an instrument for assertion of national power as opposed to local State interest in the American constitutional scheme. The power of the State to tax is also subject to due process clause of the fourteenth Amendment. Even so the Supreme Court has sustained State legislation taxing "use" of property which has just been moved in inter-State commerce or imposing property tax on goods at the conclusion of the inter-State journey.—*BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR AND OTHERS* [1953] 4 S.T.C. 43 (Pat.).

—"The Australian scheme does not appear to be quite similar to ours (the C.P. and Berar Sales Tax Act) and it may perhaps not be safe to draw an analogy."—*MOHANLAL RAMKISAN NATHANI v. THE STATE* [1952] 3 S.T.C. 305 at page 307.

—Valuable as the American decisions are as showing how the question is dealt with in a sister Federal Constitution, great care should be taken in applying them in the interpretation of the Constitution of India.—*M. P. V. SUNDARAMIER & CO. AND OTHERS v. THE STATE OF*

ANDHRA PRADESH AND ANOTHER [1958] 9 S.T.C. 298 (S.C.).

—An organic power or topic or field of legislation in the Seventh Schedule to the Constitution should be read in its widest possible amplitude and as including also all ancillary, subsidiary, incidental and necessary powers to make the legislation under the particular topic as effective as possible with reference to its objective and purpose. The question of ancillary nature or character of a provision will have to be decided with respect to the circumstances of the particular legislation, its objective and scope, vis-a-vis the particular legislative head or topic or power. —SHRI RAMKISHAN SRIKISHAN JHAVER AND OTHERS *v.* COMMISSIONER OF COMMERCIAL TAXES AND OTHERS [1965] 16 S.T.C. 708 (Mad.).

—BEG, J.—The constitutional validity of any provision in the Sales Tax Act cannot be canvassed on a reference to the High Court under section 11 of the U.P. Sales Tax Act, 1948. Nevertheless in deciding which of the two possible constructions of a legislative provision is to be adopted, the court should prefer an interpretation which, while it is reasonably acceptable, also avoids constitutional invalidity. —SALES TAX COMMISSIONER, U.P. *v.* RAM KUMAR AGARWAL [1967] 19 S.T.C. 400 (All.).

Retrospective operation.—The fact that the Madras General Sales Tax (Third Amendment) Act, 1956, had substituted for section 15 a new section, which was not retrospective in operation, did not mean that there could be no valid prosecution under the old section. The repeal of section 15 and the substitution thereof by a new section need not be retrospective. Section 15(2)(a) is a substantive provision and there is nothing relating to procedure in it.—KANDASWAMI GOUNDAN AND ANOTHER, *In re* [1958] 9 S.T.C. 542 (Mad.).

—If retrospective intention is not manifest by express words or necessary implication, statutes taking away or impairing vested rights acquired under existing law can only be given prospective operation.—K. S. NAZAR ALI MILLS LTD. *v.* COMMISSIONER OF SALES TAX, INDORE [1959] 10 S.T.C. 117 (M. P.).

—Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation. But the presumption against retrospective construction has no application to enactments which

affect only the procedure and practice of Courts or Tribunals.—R. S. REKCHAND MOHTA SPG. AND WVG. MILLS (PRIVATE) LTD. *v.* COMMISSIONER OF SALES TAX [1959] 10 S.T.C. 229 (Bom.).

—Articles 245 and 246 of the Constitution read with item 54 of List II of Schedule VII of the Constitution in respect of tax on sale or purchase of goods vest power in the State Legislatures to enact laws without imposing any limitation or restriction in regard to their being enacted retroactively. The Legislatures within the spheres allocated to them are supreme, subject to constitutional limitations. While the Courts are averse to construing a statute, particularly a taxing statute, so as to give a retrospective effect unless express words or necessary intendment compel them to do so, none the less this rule of construction cannot be confused with a constitutional limitation imposing a fetter on the power of the Legislature to enact retrospective law.—PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION *v.* THE STATE OF ANDHRA PRADESH [1958] 9 S.T.C. 723 (A.P.).

—See also pages 40, 41, 42, 247, 312.

—Unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to affect, alter or destroy any right already acquired under the existing law or to create a new obligation or enforce a new duty or attach a new disability in respect of transactions or considerations already passed. It is always presumed in such cases that the Legislature does not intend to impair existing rights or obligations unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only and not as retrospective so as to operate on transactions already concluded before the enactment came into force.—THE STATE OF GUJARAT *v.* PATEL KALIDAS NARANBHAI [1966] 17 S.T.C. 245 (Guj.).

—The Court has the power and indeed it is its duty to strike down a fiscal legislation to be unconstitutional on the ground that its retrospective operation is unreasonable and offends the guarantee under Article 19(1). But it is neither possible nor wise to generalise what may constitute or be considered as unreasonable, as, in the nature of things, it is closely related to a variety of circumstances and the context. Any retrospective taxation is not by itself unreasonable. The inhibition of *ex post facto* laws does not apply to imposition of taxes by retrospective legislation.

But if the retrospectivity is in its effect confiscatory or operates as a cloak of an oblique legislative purpose removed from ostensible tax considerations, or so totally oppressive as might destroy the very source of taxation, it may be regarded as unreasonable. After the decision of the Madras High Court in *Burmah-Shell Co., Ltd. v. State of Madras* [1968] (21 S.T.C. 227), the enactment by the Madras Legislature of the Madras General Sales Tax (Third Amendment) Act, 1967, retrospectively imposing a single point tax on furnace oil and other non-lubricating oils and validating the levies prior to 5th January, 1968, involving refusal of refund is not *ultra vires* the Legislature. It cannot be said that the Amendment Act is confiscatory in character or so oppressive or burdensome as to hold that it is unreasonable or unconstitutional.—KRISHNAMURTHI AND COMPANY AND OTHERS *v.* THE STATE OF MADRAS AND OTHERS [1969] 23 S.T.C. 1 (Mad.).

—Where the Legislature acts within its competency, it can give retrospective or future effect to the law which it makes. Where the law is made for the first time, no difficulty arises if the Legislature says or necessarily implies that it should have a retrospective effect. If a law enacted by it was revoked, subject to constitutional competency and limitation it could revive the Act by re-enactment or by making a provision which directs that the law repealed shall be deemed to have been in force at the relevant time. The last part of it is an instance of revival by reference.—A. HAJEE ABDUL SHUKOOR & CO. AND OTHERS *v.* THE SPECIAL DEPUTY COMMERCIAL TAX OFFICER (HIDES AND SKINS) II, VELLORE, AND OTHERS [1969] 23 S.T.C. 455 (Mad.).

—Power of Legislature to withdraw exemption retrospectively—Effect of withdrawal.—See THE STATE OF PUNJAB AND ANOTHER *v.* SEWAK HOTEL, BHATINDA [1968] 21 S.T.C. 276 (Punj.).

Construction of fiscal statutes.—The Madras Act, 1939, being a fiscal enactment, the court is bound to give a fair and reasonable construction to its language without leaning to the one side or the other, remembering at the same time, that no tax can be imposed on citizens without words in the Act clearly showing an intention to levy the burden on them. It is a sound and well recognised principle that a “taxing statute must impose a charge in clear terms or fail, since it is to be construed *contra proferentum*”. In construing a taxing enactment very little weight attaches to the argument that because a specific exemption from tax is found in it, other cases not specifically exempted must be deemed to have been charged to tax. Such exemptions are

often introduced under the influence of excessive caution to quiet the fears of the timid and the unduly apprehensive. *Expressio unius* will not be *exclusio alterio* in such cases. *Per* VISWANATHA SASTRI, J., in THE PROVINCIAL GOVERNMENT OF MADRAS *v.* NEELI VEERABHADRAPPA AND OTHERS [1950] 1 S.T.C. 245, at p. 270 (Mad.).

—“If a statute professes to impose a charge the rule is that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.” *Oriental Bank v. Wright* [1880] (5 App. Cas. 842) quoted in AYODHYAPRASAD SUKLAL *v.* THE CROWN [1951] 2 S.T.C. 44 (Nag.).

—“I am not at all sure that, in a case of this kind—a fiscal case—form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute. Therefore the Crown fails if the case is not brought within the words of the statute, interpreted according to their natural meaning; and if there is a case which is not covered by the statute so interpreted that can only be cured by legislation, and not by an attempt to construe the statute benevolently in favour of the Crown”: LORD CAIRNS in *Partington v. Attorney-General* [1869] (L.R. 4 H.L. 100 at p. 122) quoted in AYODHYAPRASAD SUKLAL *v.* THE CROWN [1951] 2 S.T.C. 44 (Nag.).

—“The principle which must always be applied in construing a taxing Act is that the Government must show that the tax sought to be recovered has been imposed in language which admits of no reasonable doubt.” BEAUMONT, C.J., in COMMISSIONER OF INCOME-TAX *v.* DARABSHAH MEHTA [1935] (3 I.T.R. 147) quoted in [1952] 3 S.T.C. 102.

—“I must frankly confess that the question we have been considering is not free from doubt or difficulty and much can be said on the side supported by the Advocate-General, but if such a situation arises, then it is clear that the duty of the Court is, in case of reasonable doubt, to put such a construction upon a taxing statute as is most beneficial to the subject.” CHAGLA, C.J., in

AHMEDBHAI *v.* EXCESS PROFITS TAX OFFICER [1948] (16 I.T.R. 192) quoted in [1952] 3 S.T.C. 102.

—"It is a rule of construction that fiscal statutes in common with penal statutes, whose nature the fiscal statutes in some measure partake, must be construed strictly. This strict construction means only this much that if the words construed reasonably create a liability it is not for the Court to determine the wisdom of the enactment; but if the words do not indicate the liability of the subject, the tax must be disallowed. This does not mean that the words of the Act must be strained one way or the other, either to create a liability or to furnish a chance of escape or the means of evading the tax. All doubts must be resolved in favour of the subject, and in cases of ambiguity of the language a construction which is beneficial to the subject is to be favoured. Before, however, the Courts will hold that a liability to pay the tax exists, the language of the statute must be found to impose clearly and unambiguously the obligation." *Empress Mills, Nagpur v. Municipal Committee, Wardha*, I.L.R. [1950] Nag. 403, 423 (F.B.), quoted in *SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH* [1952] 3 S.T.C. 343 (Nag.).

—Where the language used in a fiscal statute is ambiguous and two interpretations or even more are possible, the interpretation most favourable to the subject ought to be adopted.—*RAM NARAYAN NANDALAL v. THE STATE OF ASSAM* [1953] 4 S.T.C. 195 at p. 198 (Assam).

—Being a taxing statute, if there is ambiguity about the meaning of the words, the duty of the Court is to give the benefit of reasonable doubt to the subject.—*LALCHAND GOPALJI v. THE STATE OF BOMBAY* [1952] 3 S.T.C. 102 (T.D.).

—A taxing statute must be construed strictly, and if an assessee gets an advantage which the Legislature may not have intended, but which he is entitled to on the construction of the statute, the Court should not deprive him of that advantage.—*TOBACCO MANUFACTURERS (INDIA) LTD. v. THE STATE OF BIHAR* [1950] 1 S.T.C. 282 (Pat.).

—*RAM LABHAYA, J.*—It is a settled rule of construction that the intention of the Legislature is to be gathered from the language used in the enactment which comes up to be interpreted. If the words leave no doubt as to their meaning and import, it is the obvious duty of the Court to give effect to them. Where the language is plain and admits of one meaning only, it has to be given effect to, even if it leads to apparent hardship. If there is any ambiguity or doubt in the expression of the legislative intent in a fiscal

enactment the Courts have to give the benefit thereof to the subject and relieve him from the burden of taxation.—*KAPILDEORAM BAIJNATH PROSAD v. J. K. DAS AND OTHERS* [1954] 5 S.T.C. 365 (Assam).

—The general principle that there is no room in a taxing statute for what is called the equitable construction, only applies to the taxing part of the statute and not to the procedural part.—*THE BURHANPUR TAPTI MILLS LTD. v. THE BOARD OF REVENUE, MADHYA PRADESH, AND OTHERS* [1955] 6 S.T.C. 670 (Nag.).

—If the rules construed in a reasonable manner create a liability and apply to the persons sought to be charged, the tax has to be paid irrespective of any question of hardship. The proper approach is to give the words of the rule their ordinary meaning without straining them one way or the other, either to impose a liability to tax or to help avoidance of the tax.—*THE GOVERNMENT OF ANDHRA v. N. NAGENDRAPPA AND OTHERS* [1956] 7 S.T.C. 568 (Andh.).

—If two constructions of a certain word or term in a taxing statute are possible, the court should lean in favour of that construction which gives relief to the subject.—*BHAIRONDAN TOLARAM AND OTHERS v. STATE OF RAJASTHAN AND OTHERS* [1957] 8 S.T.C. 798 (Raj.).

—There are no special rules for construing a taxing statute or of applying to it too narrow or fanciful a construction for holding against the State or in favour of a citizen. The ordinary rules of construction as are applicable generally in construing a statute for ascertaining the intention of the Legislature are applicable to taxing statutes also and if in so construing it, two equally apposite constructions are possible, the one in favour of the taxpayer should be adopted and in so construing the provisions, the context as well as the other provisions of the statute must be taken into consideration. The intention of the Legislature must be determined with reference to the scheme of taxation and thereafter to see whether the expression or clause which falls for particular interpretation is susceptible of the meaning consonant with it, whatever may be its meaning in another and different connotation. In other words, where the language of the particular provision being interpreted is capable of taxing intent and indicates the person to be taxed, that intent must be allowed to prevail even though the provision as such, divorced from its context, may appear to be ambiguous. The other provisions of the statute which throw light upon the intent of the Legislature and which may serve to show that

the particular provision ought not to be construed as if it is construed alone and apart from the rest of the Act must of necessity be also construed.—PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION *v.* THE STATE OF ANDHRA PRADESH [1958] 9 S.T.C. 723 (A.P.).

—In construing a taxing Act, if there is a doubt it should be resolved in favour of the subject. But this principle cannot be extended to cases where the words are reasonably capable of only one meaning and they are unequivocal. That principle would govern only when the words are susceptible of two meanings.—MOTILAL HARI PRASAD AND BROS. AND OTHERS *v.* THE STATE OF ANDHRA [1959] 10 S.T.C. 20 (A.P.).

—*Rule of ex visceribus actus.*—In taxing cases, one rule which the court should particularly bear in mind is the rule of construction *ex visceribus actus*. The court is bound to see that every provision of a statute is construed with reference to the context and the other provisions of the statute and preferably of the same section where it is possible to do so. It is entitled and even bound, as far as possible, to see that the interpretation it puts on a particular provision makes a consistent enactment of the whole statute. In applying these rules it has to be remembered that as far as possible nothing can be read and nothing can be implied in a taxing statute and one can only look fairly at the language used. The indispensable starting point and the first step is to examine the words of the particular provision under consideration bearing in mind that it is not a detached enactment but one forming a connected scheme. Another rule having a bearing on the interpretation of a provision which imposes a penalty is that the provision must as far as possible be construed in favour of the assessee provided no violence is done to the language used.—MAHOMED TAYOOB DARUWALA *v.* STATE OF BOMBAY [1960] 11 S.T.C. 612 (Bom.).

—No tax law can impose a burden on the subject without clear and express words prescribing the obligation. There is no scope for intendment, implication, or presumption regarding assessment of tax. The court whose plain duty is only to interpret and apply the statute, and not to legislate, should not get bogged in the quicksands of the policy of Legislature or the background of legislation. The only criterion is whether or not the words of the Act have reached the alleged subject of taxation. If the answer to this question is in the affirmative,

after giving the words their plain grammatical meaning, that ought not to be construed to afford the subject means of evasion or avoidance of tax. If the answer is in the negative the subject goes free and the State cannot strain the language to give effect to their supposed intentions.—SRI KITTAPPA DRESS MANUFACTURING AND EMBROIDERY WORKS *v.* STATE OF MADRAS [1962] 13 S.T.C. 34 (Mad.).

—Courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.—STATE OF BOMBAY *v.* AUTOMOBILE & AGRICULTURAL INDUSTRIES CORPORATION [1961] 12 S.T.C. 122 (S.C.).

—All fiscal statutes have to be construed strictly and the incidence of tax liability cannot be inferred by analogy or by trying to probe into the intentions of the Legislature.—KHMJI VISHRAM & Co. *v.* STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 779 (A.P.).

—Statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, alter, or qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning. There is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made thereunder. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the words of the provision. If the taxpayer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the statute or rule or by necessary implication therefrom, the matter is different. *Salomon v. Salomon and Co.* ([1897] A.C. 22) referred to.—INNAMURI GOPALAM & MADDALA NAGENDRUDU *v.* STATE OF ANDHRA PRADESH [1963] 14 S.T.C. 742 (S.C.).

—A taxing statute calls for a construction in accordance with the legislative intent as manifested by the statutory language so as to effectuate the legislative purpose bearing in mind that the tax laws are enacted for practical ends. The true meaning must be discovered from the

context and purpose of the provisions and their vitality must never be allowed to be frittered away by technical requirements. In the Republic of India taxing statutes are designed to see that the burden of taxation falls equally and uniformly avoiding, as far as possible, unjust or unreasonable results.—*NAND LAL HIRA LAL v. THE PUNJAB STATE* [1965] 16 S.T.C. 967 (Punj.).

—It was contended that in the case of a taxing statute, the court must place a strict construction in favour of the assessee and that unless the language of item No. 7 in the Second Schedule can be held without any doubt to be restricted only to vegetable plants, the assessee must get the benefit of the ambiguity in this language. In my opinion, the language used in the relevant item is quite clear and plain and is not capable of any other meaning than the one adopted by the Sales Tax Department. I should, however, like to point out that there is no equity in the case of taxing statutes and they have to be reasonably interpreted on the plain meaning of the language used by the Legislature. A strict or liberal construction is simply a means by which the scope of a statute is extended or restricted in order to convey the legislative meaning. Now, the long range objectives of all tax measures, it may be recalled, is the accomplishment of good social order and too stilted interpretation of tax laws with the sole object of giving benefit to the taxpayer may result in the loss of revenue at the expense of the State and may operate to the disadvantage of others contributing to its support. Of course, the charging section must be quite clear and unambiguous because tax can only be imposed by authority of law and such law must accordingly be reasonably clear in its mandate. At the same time, when an assessee chooses to bring his case within an exemption from the imposition, it is for him to bring his case quite clearly within the language of the exemption. Broadly speaking, grants of tax exemption also attract a construction which is inspired by the rule that the burdens of taxation should be distributed equally and fairly among the members of society. From whichever point of view the matter is considered, it appears that the word "vegetable" is intended to qualify the word "plants" as well.—*JUGINDER NURSERY v. COMMISSIONER OF SALES TAX, DELHI STATE, DELHI* [1966] 18 S.T.C. 345 (Punj.).

—The core of a taxing statute is in the charging section and the provisions levying such a tax and defining persons who are liable to pay such tax. If that core disappears, the remaining provisions have no efficacy.—*B.*

SHAMA RAO v. THE UNION TERRITORY OF PONDICHERY [1967] 20 S.T.C. 215 (S.C.).

—Tax cannot be the result of intendment, but the produce of express specification. If two interpretations are possible to a word or expression in a taxing statute, the meaning which leans to the benefit of the subject has to be adopted.—*S. KANNAPPA MUDALIAR v. THE STATE OF MADRAS* [1968] 21 S.T.C. 41 (Mad.).

—The court in construing a taxing statute must look at what is clearly expressed, and cannot make assumption as to the intention of the Legislature. The court will not introduce by interpretation in a taxing statute a provision which the Legislature, if it had appreciated the true position under the statute as enacted, might have made, but has not made.—*COMMISSIONER OF SALES TAX, U.P., LUCKNOW v. MADAN LAL DAYAL CHAND* [1968] 21 S.T.C. 80 (S.C.).

Departmental interpretation—"The learned Government Pleader states that the department has been interpreting the provisions of section 4 literally, and if this Court were to hold that that is not the correct interpretation several complications as well as loss of revenue would result. These are, of course, not grounds on which a Court would refrain from adopting a construction of a statutory provision which appears to it to be appropriate." *MUDHOLKAR, J., in AYODHYA-PRASAD SUKLAL v. THE CROWN* [1951] 2 S.T.C. 44 (Nag.).

—The duty of interpreting a statute is of the Court and it has to interpret the law independently of any interpretation put upon it by the executive. Therefore the executive instructions issued by the Collector of Bombay State could not be considered in interpreting entry 5 of the Schedule attached to the Saurashtra Sales Tax Ordinance (XVIII of 1950). The Sales Tax Ordinance is a taxing statute and imposes a pecuniary burden on the subjects. It must therefore be strictly construed and in case of a reasonable doubt the construction most beneficial to the subject must be adopted.—*COMMISSIONER OF SALES TAX, STATE OF SAURASHTRA v. RATILAL NANCHAND* [1955] 6 S.T.C. 714 (Saur.).

—**Administrative directions of Government—Whether create any right.**—The executive instructions or administrative directions issued by the State regulating the working of the departments in the State do not clothe any person with vested rights, when they are of non-statutory character. Violation of such instructions cannot form the subject-matter of a *lis* in a civil court or in a proceeding for the issue of a prerogative writ.

Subordinates who offend such instructions only lay themselves open to disciplinary action that may be taken against them.—*B. D. NARASIMHA SETTY AND ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER* [1963] 14 S.T.C. 94 (Mad.).

—*Construction placed by executive.*—A statute has to be construed on its terms. A construction placed by the executive of the Government on a statute cannot bind a judicial or quasi-judicial tribunal and this is particularly so in a taxing enactment. No person would be liable to tax unless he is brought within the terms of the taxing statute.—*SRI DHANDAPANI POWER-LOOM FACTORY v. COMMERCIAL TAX OFFICER* [1961] 12 S.T.C. 304 (Mad.).

Meanings of words—"A perusal of the consumption or sales tax sections of the Act and of the list of exemptions set out in Schedule III (of the Excise Tax Act R.S.C. 1927, Ch. 179 Canada) is sufficient to indicate that Parliament, in enacting the sections and the schedules, was not using words which were applied to any particular science or art, and that, therefore, the words are to be construed as they are understood in common language. To the words 'fruit' and 'vegetables', therefore, there must be given the meaning which they would have when used in the popular sense—that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein..... It is equally clear to me that when in Canada the words 'fruits' and 'vegetables' are used, their obvious and popular meaning would not include 'nuts' of any sort, or the peanuts, salted peanuts or cashews sold by the defendant."—*HIS MAJESTY THE KING v. PLANTERS NUT AND CHOCOLATE COMPANY LTD.* [1951] S.T.C. 16.

—See also *Varkey v. Agricultural Income-tax and Rural Sales Tax Officer, Peermade* [1954] (5 S.T.C. 348), *Kokil Ram and Others v. Province of Bihar*

[1949] (1 S.T.C. 217), *Madhya Pradesh Pan Merchants Association v. State of Madhya Pradesh* [1956] (7 S.T.C. 99) and *Brahmanand v. The State of U.P.* [1956] (7 S.T.C. 206) where certain words were interpreted in their common understanding and not in their technical sense. In the last three cases the word "vegetables" was interpreted as not including "betel leaves".

—See also *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola, and Another* [1961] 12 S.T.C. 386 (S.C.) where the word "vegetables" was interpreted not in any technical sense nor from the botanical point of view but as understood in common parlance. In 12 S.T.C. 286 their Lordships said that if an Act contains a word of everyday use, it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it."

—See also construction of the word *BULLION* at page 165 *supra*.

—"Vegetable" is not defined in the Act and therefore it is possible to put upon that expression one of two constructions; either we might put upon "vegetable" a construction which is consistent with the plain and natural meaning in the English language or we might put a construction which would give to that expression a special meaning and look upon the expression as a term of art. In its plain and natural meaning a "vegetable" clearly is wide enough to cover "sugar-cane" but what is urged by the Advocate-General is that we must not give it that wide meaning but must give it the popular meaning as understood by people who deal in vegetables or eat vegetables, and it is urged that from that narrow and restricted point of view sugar-cane is not a vegetable. This is a taxing statute and if two constructions are possible, we must lean in favour of that construction which gives relief to the subject. That was exactly the approach of the Sales Tax Tribunal, and in our opinion that approach was a very proper one.—*THE STATE OF BOMBAY v. PHADTARE* [1956] 7 S.T.C. 495 (Bom.).

—When the Legislature uses a term relating to any article of food, it must be construed in the sense in which it is understood in this country and not elsewhere.—*KAYANI AND CO. v. COMMISSIONER OF SALES TAX* [1953] 4 S.T.C. 387 (Hyd.).

—As the Assam Sales Tax Act, 1947, is in English and it uses English words the recognised meaning of the term "bread" which it carries in English speaking world may alone be attributed to it and no extended meaning can be given to it.

—DELHI MISTANNA BHANDAR *v.* STATE OF ASSAM [1957] 8 S.T.C. 258 (Assam).

—It is a general rule of construction that every provision or word employed by a statute is intended to have effect or be of some use, and a tautology or superfluity of language should not be imputed to the Legislature except without necessity.—MOHAMED ABDUL KHADER *v.* STATE OF MADRAS [1960] 11 S.T.C. 247 (Mad.).

—Unless the context so requires, a word cannot be construed on the basis of rules made by a subordinate authority. Section 11(5), which is enacted against evasion of tax, ought not be narrowly construed in order to facilitate evasion. A taxing statute cannot be extended in operation beyond what the words used in the statute express but, within the limits set by the words, it is the duty of the Courts so to construe statutes as to suppress the mischief against which they are directed and to advance the remedy which they are intended to provide. *Madan Lal Arora v. Excise and Taxation Officer, Amritsar* [1961] (12 S.T.C. 387) distinguished. *The Great Fingall Consolidated Ltd. v. Sheehan* (3 Com. L.R. 176) referred to. *State of Orissa and Another v. Chakobhai Ghelabhai and Co.* [1960] (11 S.T.C. 716) relied on.—BATTULAL *v.* COMMISSIONER OF SALES TAX [1962] 13 S.T.C. 893 (M. P.).

—Having regard to the intention of the Legislature to tax sales, any ambiguity as to the category in which an article should be placed should be resolved with reference to its sale. If an article is sold as an article belonging to one category it must be treated as a sale of an article of that category even though it answers the description of another category. If therefore an article is capable of being used as a chemical and also as a colour, the answer to the question what was sold would depend upon how it was treated by the vendor. If he stocked and sold it as a chemical, it would be a sale of chemical and more so if it was bought by the vendee also as such.—DAYAL SHRI NIWAS *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1963] 14 S.T.C. 184 (All.).

—The sales tax assessment being intended primarily for assessment of dealers engaged in the trade, the Court cannot dissociate the meaning which a particular commodity has acquired in the market, for the purpose of identifying the commodity for levy of sales tax. The proper rule in such cases will be to give to the commodity the particular meaning, which the buyer and the seller in the market usually give to it, unless the statute has taken care to prescribe any special marks of description or identification.—SAPT TEXTILE PRODUCTS (INDIA) PRIVATE LTD.,

BOMBAY-1 *v.* THE STATE OF MADRAS [1965] 16 S.T.C. 267 (Mad.).

—The expression “suit-cases” in entry 12 of Schedule E of the Bombay Sales Tax Act, 1959, must be construed in its popular sense, meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.—S. TAJBHAI & SONS *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 133 (Guj.).

—The words “domestic electrical appliances” must be construed according to their proper meaning and no artificially enlarged meaning should be given to them because of the succeeding words of exclusion. But if the words are ambiguous or susceptible of two meanings, the words of exclusion following them not only can but must be taken into account for the purpose of arriving at their true meaning. Words used by the Legislature in entries in various Schedules to describe different kinds of goods for prescribing different rates of tax should be construed not in any technical or scientific sense but as understood in common parlance.—VISWA & Co. *v.* THE STATE OF GUJARAT [1966] 17 S.T.C. 581 (Guj.).

—The interpretation or definition clause occurring in a statute can be used only for the purpose of interpreting words appearing in that statute and not for the purpose of interpreting words appearing in other statutes. To take a word bearing a peculiar meaning in a particular Act and to clothe that word with the same meaning when found in a different context in a different Act is a fallacious process of interpretation.—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v.* SAGAR BONE MILLS, SAGAR: NO. 1 [1966] 18 S.T.C. 338 (M.P.).

—A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as “coal” according to the meaning ascribed to it in common parlance. Viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include “charcoal” in the term “coal”. While interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.—COMMISSIONER OF SALES TAX, MADHYA PRADESH,

INDORE *v.* JASWANT SINGH CHARAN SINGH [1967] 19 S.T.C. 469 (S.C.).

—When a commodity is described in the Schedule with reference to the purpose for which it is used, the proper way of interpretation would be to consider first whether that purpose is one of its chief uses, and, secondly, whether the principle laid down by the Allahabad High Court in *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax* [1963] (14 S.T.C. 184) of the intention between the buyer and seller in regard to its use can be taken into account for deciding whether it will fall into one particular category or not. In view of the general way in which the description was given, namely, “dyeing and tanning materials” in item 59 before its amendment on 1st October, 1960, the Court cannot read into it the meaning that only commodities used exclusively for dyeing and tanning were included in that description. The principle of using a later enactment for clarifying the terms in an earlier enactment can be resorted to only where the earlier enactment is ambiguous or if it is susceptible of two meanings.—*P. PUTHOORVANA RAWTHER, DINDIGUL v. THE STATE OF MADRAS* [1964] 15 S.T.C. 903 (Mad.).

—While interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. JASWANT SINGH CHARAN SINGH* [1967] 19 S.T.C. 469 (S.C.).

—See also *COMMISSIONER OF SALES TAX, MADHYA PRADESH v. SHRI HARICHAND CHANDULAL, BHOMA, SEONI* [1965] 16 S.T.C. 13 (M.P.).

—The fact that in some of the Sales Tax Acts of other States onion and garlic have been mentioned apart from the word “vegetable” do not go to show conclusively that in common parlance the word “vegetable” would not include the items, onion or ginger. Schedules in each of the Sales Tax Acts must be examined and dealt with separately in the context of the language used in each of them respectively. The fact, therefore, that onion or garlic has been separately treated by another Legislature is not conclusive in the matter of interpretation of the word “vegetable” in the Act before me.—*WAZI AHMED v. STATE OF WEST BENGAL AND OTHERS* [1967] 20 S.T.C. 254 (Cal.).

—In interpreting items in statutes like the Sales Tax Act, resort should be had not to the

scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their ordinary sense. *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286), *Motipur Zamindary Co. (Private) Ltd. v. The State of Bihar and Another* [1962] (13 S.T.C. 1) and *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* [1967] (19 S.T.C. 469) applied.—*THE STATE OF ANDHRA PRADESH v. SATYA-NARAYANA KAITHAN (P.) LTD.* [1967] 20 S.T.C. 409 (A.P.).

—In interpreting words of common usage appearing in a taxing statute, the meaning which is popular rather than one which is technical has to be adopted.—*S. KANNAPPA MUDALIAR v. THE STATE OF MADRAS* [1968] 21 S.T.C. 41 (Mad.).

—In *Girja Shanker Dubey v. Commissioner of Sales Tax* [1968] (21 S.T.C. 127) (All.), the Court doubted the correctness of the proposition that the purpose for which an article is sold by the vendor or the use to which it is put by the purchaser determines its classification for purposes of sales tax in every case.

—Ordinarily, the dictionary meaning of a word is not helpful in determining its meaning in a taxing provision, such as the Sales Tax Act, and a word used in such a taxing provision should be assigned the meaning which it has received in the commercial circles.—*AVADH SUGAR MILLS LTD. v. SALES TAX OFFICER AND ANOTHER* [1968] 21 S.T.C. 295 (All.).

—It would not be legitimate to put on the words of an entry a construction giving them a special meaning. Those words must be construed as understood in common parlance.—*COMMISSIONER OF SALES TAX, M.P., INDORE v. SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA* [1968] 21 S.T.C. 309 (M.P.).

—If a commodity which is commercially sold or purchased falls under any of the articles mentioned in Schedule A of the Bombay Sales Tax Act, 1959, the exemption will be immediately attracted, irrespective of what use is made or what the intention of the purchaser is.—*THE STATE OF GUJARAT v. KESHAVLAL MANGUBHAI* [1968] 22 S.T.C. 271 (Guj.).

—It will not be safe to interpret the entries in the Schedule to the Bombay Sales Tax Act with reference to definitions of words used in different context in other Acts.—*COMMISSIONER OF SALES TAX v. VOLTAS LIMITED* [1968] 22 S.T.C. 185 (Bom.).

—The mode in which a person may choose to advertise his commodity cannot be decisive in determining its real nature.—*RAMTIRTH YOGASHRAM v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 76 (Bom.).

—Sales tax is a liability which affects the mercantile community and to consumer public and therefore the items mentioned in a notification fixing rate of tax must be construed according to the understanding popular in that community and section of the people. To impose a technical or artificial meaning to the items will result in defeating or stultifying the intention behind the provision.—*IMPERIAL SURGICO INDUSTRIES LTD., LUCKNOW v. COMMISSIONER, SALES TAX, UTTAR PRADESH, LUCKNOW* [1969] 23 S.T.C. 201 (All.).

—As the import and content of the words “Terylene”, “Terene”, “Dacron”, etc., have not been defined in the Sales Tax Acts, courts are bound to have recourse to the meaning attributable to such words by persons who are dealing in such goods and utilising such goods. In other words, the extreme, peculiar and scientific meaning of the goods which might sometimes deviate from the popular meaning, cannot prevail. Ordinarily, courts when called upon to interpret the meaning of such words, mainly rely upon their popular or ordinary meaning. The meaning which the trade, Government officials, and statutes attribute to the words “artificial silk” must be taken to be the ordinary and popular meaning of the same. It is a fundamental canon of law that whilst it is possible for both the Centre and the State to interpret upon and explain certain words or expressions used in taxing statutes amongst others, a certain uniformity should prevail in order to avert inconvenience and harassment resulting to the persons affected by such an interpretation or ruling. Article 261 of the Constitution of India is a pointer to this effect and provides that full faith and credit shall be given throughout the territory of India to public acts of the Union and of every State.—*KISHINCHAND CHELLARAM AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, CHINTRADIPET DIVISION, MADRAS-2 AND OTHERS* [1968] 21 S.T.C. 367 (Mad.).

Dictionary meanings of words—According to Maxwell “definitions in the dictionaries have been deprecated” but at the same time he proceeds to quote Lord Coleridge with approval: “I am aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of Courts of law that words

shall be taken to be used in their ordinary sense, and we are therefore sent for instructions to these books” (by which, of course, he meant “dictionaries”) (pages 34 and 35 of the Interpretation of Statutes, Ninth Edition).—*ALL INDIA REPORTER LTD. v. THE STATE* [1952] 3 S.T.C. 219.

—“Dictionary meaning cannot be regarded as the last word on the subject. According to Maxwell (page 34 of the Interpretation of Statutes, 9th Edition) ‘definitions in dictionaries have been deprecated.’ He quotes Lord Coleridge ‘dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words shall be taken to be used in their ordinary sense, and we are therefore sent for instruction to those books.’” H. S. Kamath, President, in *MOHANLAL RAMKISAN NATHANI v. THE STATE* [1952] 3 S.T.C. 305.

—The Bombay Sales Tax Act, 1946, does not contain a definition of the term “food” and therefore the dictionary meaning of the word can be legitimately considered; but one has to remember here the passage at pp. 34 and 35 in Maxwell on Interpretation of Statutes (9th Edition). Dictionaries no doubt inform us about the ordinary meanings of the words but they will have to be adopted in the absence of anything specific in the statute to indicate what the Legislature meant by using the particular word.—*MOTILAL LAXMIDAS AND CO. v. THE STATE OF BOMBAY* [1951] 2 S.T.C. 153 (T.D.).

—Where a term is not defined by statute, the dictionary meaning of it is to be taken as the meaning intended.—*SRI SHIB NATH HAZRA v. STATE OF WEST BENGAL* [1952] 3 S.T.C. 214.

—The expression “natural meaning” is to be preferred to the expression “popular meaning” and it would not be improper to consult dictionary meaning of words to ascertain such natural meaning. The benefit of doubt in a fiscal measure is to be given to the subject.—*INTERNATIONAL RADIO COMPANY, BOMBAY v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 210 (T.D.).

—The mere fact that in dictionaries words are explained and elucidated by reference to other words is not the final test of the exact shade of meaning of a particular word.—*MAHABIR SINGH RAM BABU v. ASSISTANT SALES TAX OFFICER* [1962] 13 S.T.C. 248 (All.).

—It is not the dictionary meaning of a term that will invariably prevail in the construction

of a statute. The rule of interpretation in such cases is that particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists.—*KRISHNA IYER v. STATE OF KERALA* [1962] 13 S.T.C. 838 (Ker.) (F.B.).

Assembly debates—The High Court cannot refer to the debates which took place in the Constituent Assembly over a clause. The intention of the Legislature must be taken from what it has enacted and not from what the legislators said while discussing the Bill.—*SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH* [1952] 3 S.T.C. 343 at page 362 (Nag.).

—The speeches made by the members of the Constituent Assembly in the course of debates on the draft Constitution are not admissible in interpreting the provisions of the Constitution.—*THE STATE OF TRAVANCORE-COCHIN AND OTHERS v. THE BOMBAY COMPANY LTD., ALLEPPEY AND OTHERS* [1952] 3 S.T.C. 434 (S.C.).

Statement of objects and reasons—While the statement of objects and reasons should not be relied upon in construing the provisions of an Act it could be looked into for the purpose of ascertaining the conditions that prevailed at the time when the impugned law was made. But the reasons and the motives that prompted the Legislature to make a law are not justiciable. That is entirely a matter of legislative policy with which the Courts are unconcerned. The doctrine of colourable legislation revolves round the legislative competence and it has nothing to do with the reasons or the objects behind the legislation.—*SRI DURGA RICE & BABA OIL MILLS v. STATE OF ANDHRA PRADESH* [1964] 15 S.T.C. 676 (A.P.).

—It is only when the terms of a statute are ambiguous or vague that resort may be had to the statement of objects and reasons for the purpose of arriving at the true intention of the Legislature. In the absence of ambiguity, the legislative history also is not an external aid to the interpretation which can be pressed into service. But if there is ambiguity, the Court is entitled to look at not only the words used, but the history of the Act, and the reasons which led to its being passed; at the mischief which had to be cured as well as the cure that has been provided.—*K. A. KARIM v. SALES TAX APPELLATE TRIBUNAL* [1963] 14 S.T.C. 36 (Ker.).

—A section in an enactment cannot be construed in the light of the statement of objects

and reasons. But in order to ascertain the true scope of a statute, it will be open to the Court to look at the state of law as it existed before and the mischief which was intended to be remedied by the subsequent statute.—*SRI DHANDAPANI POWER-LOOM FACTORY v. COMMERCIAL TAX OFFICER* [1961] 12 S.T.C. 304 (Mad.).

Statement of objects and reasons—Objects and reasons of a statute cannot control the plain meaning of statutory language; they can only be referred to for the limited purpose of discovering the historical background leading up to the legislation in order to understand the mischief sought to be remedied, and that too if there is some ambiguity in the language of the Act. There was no ambiguity in the statutory language of Central Act 58 of 1957 and the duty of excise sought to be imposed could by no stretch be considered, because of the statutory objects and reasons, to be a tax either on sale or purchase of goods.—*EVEREST WOOLLEN MILLS v. THE STATE OF PUNJAB AND ANOTHER* [1966] 18 S.T.C. 69 (Pun.).

Press note issued by Government—Whether binds judicial tribunal.—*SRI DHANDAPANI POWER-LOOM FACTORY, ERODE v. COMMERCIAL TAX OFFICER, COIMBATORE, AND ANOTHER* [1961] 12 S.T.C. 304 (Mad.).

Exemption—Interpretation of provisions.—“In interpreting provisions for exemptions from the general rules, it is well to remember what was pointed out by Lord Halsbury in *Inland Revenue v. Forrest* (1890) 3 Tax Cas. 117, that all exemptions from taxation increase the burden on other members of the community. The argument for strict interpretation in favour of the subject is not as forcible in the case of provisions for exemptions as in the case of provisions imposing burdens. *Per* DAS GUPTA, J., in *COMMERCIAL TAX OFFICER AND ANOTHER v. SHREE GANESH JUTE MILLS LTD.* [1953] 4 S.T.C. 298 (Cal.).

—The Act prescribes the cases and instances which entitled a taxpayer to relief and to be entitled to any such relief *he must demonstrate* that he satisfies the requirements prescribed by the statute. The burden is on him to do so.—*HER MAJESTY THE QUEEN v. SAMUEL H. LEVENTHAL ET. AL.* [1952] Canadian Tax Cases 160.

—*Failure to observe condition impossible of performance—Whether prevents assessee from claiming exemption.*—See *THE STATE OF MADRAS v. P. G. GOVINDASWAMY AND CO., AND OTHERS* [1954] 5 S.T.C. 103 (Mad.).

—All fiscal enactments should be interpreted strictly and the subject is not to be taxed unless

the language of the Statute clearly imposes the obligation. Provisions relating to exemption from tax must also be strictly construed and limited to the exemption itself. Where the intention of the Act is to levy sales tax on all articles generally other than those which are specified in the exempted list, the assessee must show that he comes within that exempted list.—*SHARFAJI RAO v. COMMISSIONER OF SALES TAX* [1953] 4 S.T.C. 6 (Hyd.).

—The Madras General Sales Tax Act, 1939, and the Rules framed thereunder being of the nature of a fiscal legislation, unless there is a specific provision to the effect that the exemptions and concessions that are intended by the specific language of the rules of the enactment could not be availed of by the assessee unless and until the assessee complies with every one of the requirements, it will not be legal or within the rules of proper interpretation of the statutory enactment to infer that the assessee should be penalised and should be deprived of the benefits given to him as a substantial right. The Madras General Sales Tax Act being a fiscal enactment and the rules framed thereunder also partake of the same character, the words in the statute should be strictly adhered to and no construction such as would favour the Government as against the subject should be put thereupon.—*THE STATE OF MADRAS v. HAJEE M.S.A. MEERAN SAHIB CO.* [1954] 5 S.T.C. 71 (Mad.).

—*SARJOO PROSAD, C.J.*—All exemptions from taxation must be strictly construed and must not be extended beyond the express requirements of the language used. The taxation laws are not in the nature of penal laws; they are substantially remedial in their character and are intended to prevent fraud, suppress public wrong and promote the public good. They should, therefore, be construed in such a way as to accomplish those objects.—*KAPILDEORAM BAIJNATH PROSAD v. J. K. DAS AND OTHERS* [1954] 5 S.T.C. 365 (Assam).

—In interpreting a fiscal enactment if there is any doubt or ambiguity in the expression of the legislative intent the benefit of such doubt should go to the subject but when exemption from taxation or deduction is claimed they should not be extended beyond the express requirements of the language of the provision. It is for the person claiming a benefit under a provision granting exemption to establish the conditions which attract the applicability of such exemption.—*TUNGABHADRA INDUSTRIES LTD., KURNOOL v. COMMERCIAL TAX OFFICER, KURNOOL* [1955] 6 S.T.C. 259 (Andh.) partly reversed by Supreme Court in [1960] 11 S.T.C. 827.

—The Bengal Finance (Sales Tax) Act, 1941, by providing for the deduction of the sales to two named departments of the Government of India from the taxable turnover treated those two departments as distinct entities. This exemption is the creation of the statute and must be construed strictly and cannot be extended to sales to other departments. The fact that the section was not amended until 1949 does not at all indicate that the Bengal Legislature intended to extend the benefit of the section to any but the departments specifically mentioned in the section.—*THE UNION OF INDIA AND ANOTHER v. COMMERCIAL TAX OFFICER, WEST BENGAL, AND OTHERS* [1956] 7 S.T.C. 113 (S.C.).

—In the case of an exemption, if the words of the rule are insufficient to cover the case, the reason behind the rule cannot be availed of to obtain the relief.—*TUNGABHADRA INDUSTRIES LTD., KURNOOL v. COMMERCIAL TAX OFFICER, KURNOOL* [1960] 11 S.T.C. 827 (S.C.).

—While construing any provisions of exemption strictly, one should not lose sight of the actual language employed in the rule and also the purpose for which it is made.—*MANDAVA BALARAMA KRISHNAMURTHY v. THE STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 83 (A.P.).

—The exemption granted by an entry in the Schedule is a creature of the Schedule and must be construed strictly.—*COMMISSIONER OF SALES TAX, M. P. v. SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA* [1968] 21 S.T.C. 309 (M.P.).

Distinction between exemptions from tax and non-liability to tax—There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax on such sales and they should be excluded from the calculation of the gross turnover as well as the net turnover on which sales

tax can be levied or imposed.—*A. V. FERNANDEZ v. THE STATE OF KERALA* [1957] 8 S.T.C. 561 (S.C.).

Explanation and proviso—An explanation is not a proviso. It does not carve out of the section something which the section has provided and deal with that part which is carved out. It is not the function or purpose of an explanation to extend the scope of the section itself or to restrict its operation. An explanation ordinarily is intended to apply to the whole ambit of the section and to throw light on the construction of the words used by the Legislature. An explanation very often introduces a legal fiction and treats the legal fiction as a reality contained in the section itself.—*UNITED MOTORS (INDIA) LTD. AND OTHERS v. THE STATE OF BOMBAY AND ANOTHER* [1953] 4 S.T.C. 10 (Bom.).

—Dealing with the Explanation to Article 286(1)(a), the Supreme Court observed in *The State of Bombay and Another v. United Motors (India) Ltd. and Others* [1953] (4 S.T.C. 133) as follows:—"It may be that the description of a provision cannot be decisive of its true meaning or interpretation which must depend on the words used therein, but, when two interpretations are sought to be put upon a provision, that which fits the description which the Legislature has chosen to apply to it is, according to sound canons of construction, to be adopted provided, of course, it is consistent with the language employed, in preference to the one which attributes to the provision a different effect from what it should have according to its description by the Legislature." In the above decision as well as in the subsequent decision of the Supreme Court in *The Bengal Immunity Company Limited v. The State of Bihar and Others* [1955] (6 S.T.C. 446) the Court was of opinion that the explanation was not an exception or proviso either to clause (1)(a) or clause (2) of Article 286.

Explanation—An explanation which only purports to explain what the main provision means must be regarded as retrospective in its scope.—*R. M. KRISHNASWAMY NAIDU & SONS v. THE STATE OF MADRAS* [1965] 16 S.T.C. 670 (Mad.).

—An explanation does not enlarge the scope of the original section. The principle of harmonious construction requires that an explanation cannot be read in any way inconsistent with the content of the main section.—*THE STATE OF ANDHRA PRADESH v. T. R. SOMARAJU AND OTHERS* [1965] 16 S.T.C. 177 (A.P.).

—"The proper function of a proviso (it has been stated in *Madras & Southern Mahratta Railway Co., Ltd. v. Bezwada Municipality* A.I.R. 1944 P.C. 71, 73) is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where.....the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms." But an explanation is different in nature from a proviso, where the latter excepts, excludes or restricts, the former explains or clarifies. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself.—*GOVINDRAM LAXMAN PRASAD v. STATE OF MADHYA PRADESH* [1951] 2 S.T.C. 176.

—A proviso is usually introduced by the word "provided"; but the absence of the word is not conclusive. The substance and not the form will control the interpretation. The mere styling of a provision as an "explanation" is not decisive of its character. An explanation should only explain or clarify. If it excepts, excludes or restricts, it is not an explanation but a proviso, and should be considered as operative only from the date of its introduction.—*KRISHNA IYER v. STATE OF KERALA* [1962] 13 S.T.C. 838 (Ker.) (F.B.).

Proviso—The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso, would be within it.—*KEDARNATH JUTE MANUFACTURING Co. LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1965] 16 S.T.C. 607 (S.C.).

—A proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the Legislature desires to be excluded.—*SALES TAX OFFICER, CIRCLE I, JABALPUR v. HANUMAN PRASAD* [1967] 19 S.T.C. 87 (S.C.).

—A proviso cannot take the place of or substitute the main part. It can do no more than to restrict by exception or qualification the scope and ambit of the main provision and where the main provision is somewhat ambiguous, a proviso may sometimes throw light to clear the ambiguity but it can never as a proviso expand, enlarge or amplify the scope and ambit of the main provision which on its plain language is

restricted. Nor can a proviso import, by any means, into the main part words which are not there. A proviso completely depends on the main part and is subject to it, as otherwise it will cease to be a proviso and be an independent provision by itself. If the draftsman or the Legislature assumed but wrongly wider scope and content of a main enacted provision which plainly or *ex facie* is not justified and on that assumption modelled and legislated a proviso, such an assumption implied in the proviso is entirely futile to have the effect of law.—**SHRI RAMKISHAN SRIKISHAN JHAVER AND OTHERS v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS** [1965] 16 S.T.C. 708 (Mad.).

Procedural regulations—Procedural regulations as well as the procedural practice must be so construed as to advance and further the cause of justice. Statutes conferring a right of appeal or a revision must be construed in furtherance of justice and the provision limiting the time for bringing an appeal or revision must be liberally interpreted so that the party pursuing such remedy allowed to him by law is not non-suited on mere technicalities; this is all the more so, where the period of limitation is not prescribed by a legislative authority (primary or delegated) but is fixed merely as a matter of practice by the Tribunal itself under its inherent powers of regulating its procedure. An interpretation of procedural regulation, which ensures that a case will be considered on merits, is to be highly preferred, and mere technicalities should never be permitted to impede the trial of a cause. Such an interpretation is all the more desirable when a *quasi* judicial Tribunal deals with statutes providing for remedies to the taxpayers, because it is essential that taxpayers should secure adjudication of an assessment or judicial review of assessment provided by law without impediments created by bare technicalities of procedure.—**CHAMAN LAL & BROS. v. THE PUNJAB STATE** [1961] 12 S.T.C. 643 (Pun.).

Hindi and English versions of statute—Which version is authoritative.—The doctrine that if there be two versions of a statute in two different languages, one version can be used to interpret the other cannot be applied to India because the Constitution of India specifically provides that where laws are passed in an Indian language and are translated into English, the authoritative version shall be the English. However if there is any ambiguity resort can be had to extraneous aid which may include the Hindi version.—**GOVINDRAM RAM PRASAD OF INDORE v. ASSESSING AUTHORITY (SALES TAX) AND ANOTHER** [1957] 8 S.T.C. 407 (M.P.).

Translation of Act—In *Swaminatha Ayyar, In re* [1941] (1 S.T.C. 101) it was argued that as in the Tamil translation of the Madras General Sales Tax Act it was said that a return need only be sent in if the annual turnover exceeds Rs. 20,000 and as the annual turnover of the petitioner was only Rs. 11,000, he was entitled to rely on the Government translation of the Act and therefore he had not committed any offence for not submitting the return. To this argument the learned Judge (HORWILL, J.) said as follows:—"There might have been some ground for the argument if the accused had put that forward in the lower court; but the discovery of the Tamil translation seems to have been the act of his counsel rather than of the accused himself."

When statute comes into force—When the Legislature fixes a date and clearly expresses its intention that the Act shall come into force from that date, it is immaterial whether the Bill, after having passed from the Houses, receives the assent of the Governor or President, as the case may be, prior to such date or subsequent to it. In either case, the intention being express and manifest, the Act shall come into force on that date.—**THE GUNTUR DISTRICT CO-OPERATIVE MARKETING SOCIETY LTD. v. THE STATE OF ANDHRA PRADESH AND ANOTHER** [1967] 20 S.T.C. 476 (A.P.).

Government of India, whether person—The expression "person" would normally include the Union of India or a State but as a rule of interpretation of statutes the Union of India or State would be excluded from the charging or penal provisions of the statute unless the intention of the Legislature to the contrary could be inferred from the express provisions or by necessary intendment.—**CHELLARAM KISHANDAS v. STATE OF MAHARASHTRA** [1964] 15 S.T.C. 545 (Mah.).

"And", "including", meanings of—The word "and" is normally employed to express the relation of addition, the adding of something to that which preceded. The word "including" denotes a different meaning; an additive power is not its necessary attribute.—**K. A. KARIM v. SALES TAX APPELLATE TRIBUNAL** [1963] 14 S.T.C. 36 (Ker.).

Ejusdem generis rule—Applicability of *ejusdem generis* rule in interpreting item 51 of Schedule I of the Madras General Sales Tax Act, 1959.—**THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. AMBIKA STORES** [1963] 14 S.T.C. 688 (Mad.).

—Applicability of *ejusdem generis* rule in interpreting words "any other place" in proviso

to section 5(1), Andhra Pradesh Act.—THE STATE OF ANDHRA PRADESH *v.* T. T. KRISHNAMACHARI & Co. [1962] 13 S.T.C. 10 (A.P.).

Rule of ejusdem generis—The rule of *ejusdem generis* should be applied with care and only to cases where it is clearly applicable.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM *v.* P. Jos ZACHARIAH, ERNAKULAM [1965] 16 S.T.C. 799 (Ker.).

—It is well-settled that for the applicability of the rule of *ejusdem generis*, the enumerated things before the general words must constitute a category or a genus; it is requisite that there must be a distinct genus, which must comprise more than one species (see *State of Bombay v. Ali Gulshan* A.I.R. 1955 S.C. 810 at p. 812 and *Kochuni v. States of Madras and Kerala* A.I.R. 1960 S.C. 1080 at p. 1103). If the specified things preceding general words belong to different categories, the rule of *ejusdem generis* cannot be applied (see *Indramani v. W. R. Natu* A.I.R. 1963 S.C. 274 at p. 281 and *Hamdard Dawakhana v. Union of India* A.I.R. 1965 S.C. 1167 at p. 1172).—S. R. CALCUTTAWALA, SIYAGUNJ, INDORE *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1967] 19 S.T.C. 230 (M.P.).

—If two species are mentioned followed by general words, the rule of *ejusdem generis* may limit the sense of the general words to the species constituting a genus. But where a genus itself is mentioned followed by mention of certain species and in between is introduced general words, we think the position is *a fortiori*, for, sandwiched as they are, the general words will, in our opinion, take their sense and scope from the associated words preceding and following them.—BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LIMITED, MADRAS-1, AND OTHERS *v.* THE STATE OF MADRAS [1968] 21 S.T.C. 227 (Mad.) and *TEXTOL COMPANY LIMITED v. THE STATE OF MADRAS AND ANOTHER* [1968] 21 S.T.C. 232 (Mad.).

CONTAINERS

(See also PACKING MATERIALS)

Containers and packing materials—*Exemption of kerosene*—*Sale of kerosene in sealed tins*—*Sale price of tins*—*Whether liable to sales tax*.—An exemption in a taxing measure cannot be carried further than the exemption itself indicates. If the exemption is in respect of kerosene that exemption cannot be stretched to cover the container. Unless it can be shown that there is no sale of the tins as such, there can be a tax on the tins. Where a dealer sold in sealed tins

kerosene, which was an exempted commodity under the Madhya Bharat Sales Tax Act, 1950, and it was found that when kerosene was sold in bulk a sum of Rs. 1-9-0 per four gallons was charged less than when it was sold in a tin: *Held*, that there was a sale of the tins and as the exemption in respect of kerosene could not be stretched to cover the containers, the sale price of tins was liable to sales tax.—GOVINDRAM RAMPRASAD OF INDORE *v.* ASSESSING AUTHORITY (SALES TAX) AND ANOTHER [1957] 8 S.T.C. 407 (M.P.).

"Sealed containers"—*Meaning of*.—Clause (2) of the Notification No. S.T. 118/X-929-48 dated 7th June, 1948, issued by the Governor in exercise of the powers conferred by section 4 of the U.P. Sales Tax Act, 1948, exempted from sales tax "dealers in cooked food (other than cooked food sold in sealed containers) including sweetmeats and other confectionery" on payment of a certain fee. The assessee was a firm carrying on the business of manufacture and sale of confectionery such as chocolates, lollipops, lemondrops etc. The assessee claimed exemption from sales tax under the notification and the case proceeded on the basis that as cooked food included sweetmeats and confectionery, only such sale of confectionery would fall out of the exemption clause where the confectionery was sold in sealed containers. It was found that the cardboard boxes in which the confectionery was kept had a lid which was not fastened or secured to the box by any label or seal and could be removed without breaking any seal or label. The whole box with the lid on was then wrapped up in cellophane paper whose ends at two sides were secured by pasting with some adhesive material. There was no seal or label of any kind pasted at the point where the ends of cellophane wrapping were secured: *Held*, that the turnover representing the sale of confectionery by the assessee was not the turnover of confectionery sold in sealed containers. A dealer carrying on the business of selling sweetmeats and confectionery on a comparatively smaller scale would find it uneconomical commercially to put the stuff sold or to be sold in sealed containers. It is only a large scale manufacturer who manufactures and exports the confectionery who would need sealing the same in a container and only such class of dealers are not intended to be exempted from the liability to pay sales tax on their turnover. When a class of persons are selected for enjoying a benefit conferred by the statute then the clauses in the statute providing any exception ought to be construed strictly so that the real intention of the statute conferring the benefit should be available to as large a class of persons

as intended therein.—**K. P. BHARGAVA v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW** [1963] 14 S.T.C. 386 (All.). On appeal to the Supreme Court this decision was reversed. See the next para.

—Clause (2) of the Notification No. S.T. 118/X-929-48 dated June 7, 1948, issued by the Governor in exercise of the powers conferred by section 4 of the U.P. Sales Tax Act, 1948, exempted from sales tax “dealers in cooked food (other than cooked food sold in sealed containers) including sweetmeats and other confectionery” on certain conditions. The assessee-firm, which carried on the business of manufacture and sale of confectionery such as chocolates, lollipops, lemondrops etc., sold the confectionery in packings of tins and cardboard which were closed by the use of cellophane paper to protect the contents from being affected by the atmosphere. The assessee contended that the sales of confectionery were exempt from sales tax under the notification on payment of the prescribed fee but the Sales Tax Officer rejected the claim on the ground that the confectionery was sold in “sealed containers”. On a reference, the High Court held that the turnover representing the sale of confectionery by the assessee was not the turnover of confectionery sold in sealed containers. On appeal to the Supreme Court: *Held*, that the packets sold by the assessee fell within the expression “sealed containers” within the meaning of the notification. “Sealed container” means a container which is “so closed that access (to the contents) is impossible without breaking the fastening.” Decision of the Allahabad High Court in *K. P. Bhargava v. Commissioner of Sales Tax, U.P., Lucknow* [1963] (14 S.T.C. 386) reversed.—**COMMISSIONER OF SALES TAX, U.P. v. G. G. INDUSTRIES, AGRA** [1968] 21 S.T.C. 63 (S.C.).

Containers and other materials used for packing—Liability to tax.—**MRS. PANNA LAL RAM KISHORE v. SALES TAX OFFICER** [1964] 15 S.T.C. 245 (All.).

Exempted goods sold in containers—Value of containers—When liable to sales tax.—The respondent sold hydrogenated oil which was exempt from sales tax under the Assam Sales Tax Act, 1947. The question was whether the value of the containers in which hydrogenated oil was sold could be assessed to sales tax under the Act. The High Court held that the value of the containers was not assessable to sales tax unless separate price had been charged for the containers. On appeal to the Supreme Court: *Held*, that the value of the containers was assessable to

sales tax under the Act if there was an express or implied agreement for the sale of such containers and the mere fact that the price of the containers was not separately fixed made no difference to the assessment of sales tax. The question as to whether there is an agreement to sell packing material is a pure question of fact depending upon the circumstances found in each case. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* ([1959] S.C.R. 379; 9 S.T.C. 353) and *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* [1966] (17 S.T.C. 624) referred to.—**COMMISSIONER OF TAXES, ASSAM v. PRABHAT MARKETING CO., LTD.** [1967] 19 S.T.C. 84 (S.C.).

Sale of kerosene in sealed tins—Value of tins specified and charged for separately—Whether can be deducted from taxable turnover.—In order to decide whether an amount obtained by a dealer from his purchaser is a charge for packing and delivery, the Court must first decide what is the item sold, and then find out whether the amount involved is a charge for the packing and delivery of that item. If what is sold is kerosene, then it has certainly to be packed in a container before delivery, and the charge for packing the kerosene in a container, if specified and charged for separately, will come within the ambit of rule 9 of the Kerala General Sales Tax Rules, 1963. If, on the other hand, what have been sold are sealed tins of kerosene, then the articles sold are packaged articles and no further packing in any container will be usual or necessary. In other words, the value of the packing when the article sold is a packaged article cannot be considered as coming within the expression “charges for packing and delivery” in rule 9 of the Rules.—**M. KUTTY HASSAN KUTTY v. SALES TAX OFFICER, PONNANI** [1967] 19 S.T.C. 278 (Ker.).

CONTEMPT OF COURT

Contempt of Court—Writ petition challenging validity of provisions—Issue of interim order of stay directing officer not to take further assessment proceedings—Officer issuing notice to assessee that he is liable to tax and should furnish security for proper payment of Government dues—Whether officer liable for contempt of Court—Duty of Government officers stated.—The petitioner filed writ petition challenging the validity of item 7 of the Second Schedule to the Madras General Sales Tax Act, 1959, and also prayed for stay of all further assessment proceedings in respect of the years 1967-68 and 1968-69 pending disposal of the writ petitions. The Court passed an interim order staying all further assessment proceedings for the years 1967-68 and 1968-69 in respect of the petitioner, pending further orders on the writ

petitions. On the day the interim order of stay was served on the assessing officer, he issued to the petitioner a notice which stated, *inter alia*, that according to the provisions in force the petitioner was liable to tax on the transactions effected by him as a registered dealer and that the petitioner should furnish security for proper payment of Government dues before a certain date as required by section 21(5) of the Madras General Sales Tax Act, 1959. The petitioner thereupon filed a petition for taking action against the officers for contempt of orders of the High Court: *Held*, that the notice issued to the petitioner constituted contempt of the High Court. [As the officers tendered unconditional apology, the Court did not take any further action in the matter.] No officer of the Government, however high or exalted he may be, can take upon himself the responsibility of judging the correctness or validity of an order of any Court and if he honestly and *bona fide*, in the discharge of his functions, feels that the order is erroneous or requires any modification, the only remedy open to him is to approach that Court by way of review or modification, or a higher Court by way of appeal or otherwise. Apart from that, it is not open to him to take upon himself the responsibility of judging the order and take any action contrary to or inconsistent with the same on the basis of his own judgment.—*MOTTUR HAJEE ABDUL RAHMAN AND COMPANY v. THE DEPUTY COMMERCIAL TAX OFFICER, VANIYAMBADI, AND ANOTHER* [1968] 22 S.T.C. 472 (Mad.).

CONTRACTS

Contract in proviso to section 4(1), C. P. and Berar Sales Tax Act, 1947—The word “contract” occurring in the proviso to section 4(1) of the C. P. and Berar Sales Tax Act, 1947, is to be understood in the special sense given to it by its definition in section 2(b) and not in its general sense.—*HIRJI GOVINDJI v. COMMISSIONER OF SALES TAX, M. P., NAGPUR* [1955] 6 S.T.C. 370 (Nag.).

—The word “contract” in the proviso to section 4 of the C.P. and Berar Sales Tax Act, 1947, must receive the interpretation of that word as stated in section 2(b). Where goods are despatched after the Act came into force against orders received prior to the Act, the proviso to section 4 is not applicable and such despatches are sales within section 2(g).—*NEMKUMAR KESRIMAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1955] 6 S.T.C. 222 (Nag.).

Definition of contract in Bengal Finance (Sales Tax) Act—The definition of contract for the purpose of the Bengal Finance (Sales Tax) Act,

1941, cannot be extended beyond the three items mentioned in section 2(b)(i), (ii) and (iii) of the Act.—*R. R. DAS & SONS v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 111.

Exemption of contracts of sale entered into before certain date—Chotanagpore—Act VI of 1949 amending proviso to section 4(1), Bihar Sales Tax Act, 1947—Notification extending Act VI of 1949 to Chotanagpore—Validity—Applicability of Act VI of 1949 to proceedings commenced in October, 1948.—*STATE OF BIHAR v. S. S. MUKHERJEE* [1954] 5 S.T.C. 377 (Pat.).

—**Oral contracts entered into prior to commencement of Act—Whether exempted.**—The proviso to section 4(1) of the Orissa Sales Tax Act, 1947, does not say that the contract should be a written contract in order to be taken out of the scope of the Act. The Act also does not apply to oral contracts if they have been entered into before the date notified.—*BANCHHANIDHI MISRA v. THE STATE OF ORISSA AND OTHERS* [1955] 6 S.T.C. 441 (Ori.).

“Contract” in section 4(1) proviso of the East Punjab Act—Meaning of.—*WAH STONE & LIME QUARRY Co. v. THE PUNJAB STATE* [1963] 14 S.T.C. 167 (Punj.).

Indian Contract Act, 1872, Section 72—Whether covers payments under mistake of law.—See Mistake of Law.

(See also Building Contracts, Labour Contracts, Printer, Electrical Goods, Dyeing and Watch Repairer).

COOCH BEHAR

Sales tax—Deductions—Despatch of goods outside West Bengal—Merger of Cooch Behar with West Bengal but extension of Act to that area on a later date—Despatch of goods to Cooch Behar after merger before extension of Act—Whether allowable deduction under section 5(2)(a)(v), Bengal Finance (Sales Tax) Act (6 of 1941).—When section 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act, 1941, speaks of goods being despatched to an address outside West Bengal, it means to a place outside the geographical area of the State of West Bengal. Therefore although the Bengal Finance (Sales Tax) Act, 1941, was extended to Cooch Behar only from 1st January, 1951, as from the 1st January, 1950, the erstwhile State of Cooch Behar formed part of the geographical entity of the State of West Bengal, it could not be said that any goods despatched to Cooch Behar after 1st January, 1950, would be goods despatched outside the State of West Bengal. Therefore sales by an assessee under which goods were despatched to dealers in Cooch Behar after 1st January,

1950, could not be exempted under section 5(2)(a)(v) in computing the assessee's taxable turnover. Rule 3(19) of the Bengal Sales Tax Rules, 1941, was enacted for the benefit of the dealers in Cooch Behar. It granted no rights, fundamental or otherwise, to the dealers in other parts of West Bengal who had already charged the sales tax from its purchasers on sales made to its customers in West Bengal. *Firm Gulam Hussain Haji Yakub and Sons v. State of Rajasthan* ([1963] 2 S.C.R. 255) referred to.—*BIRI TRADING CO. v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1968] 21 S.T.C. 169 (Cal.).

COOKED FOOD

Biscuits—*Whether cooked food*.—See page 137 *supra*.

Cooked food—*Meaning of*—*Whether biscuits cooked food and exempt from sales tax*.—The term "cooked food" used in entry 41 of Schedule II to the C.P. and Berar Sales Tax Act, 1947, cannot be read in a wide sense so as to include everything made fit for eating by application of heat, as by boiling, baking, roasting, broiling etc. The term is confined to those cooked things which one generally takes at regular meal hours. Therefore biscuits do not fall within the meaning of the term "cooked food" used in entry 41, and are, therefore, not exempt from tax under that entry. It would not be legitimate to put on the words of entry 41 a construction giving them a special meaning. Those words must be construed as understood in common parlance. The exemption granted by entry 41 is a creature of the statute and must be construed strictly.—*COMMISSIONER OF SALES TAX, M.P., INDORE v. SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA* [1968] 21 S.T.C. 309 (M.P.).

"Chhana"—*Whether cooked food and exempt from sales tax*.—"Chhana", which is a form of milk food, is cooked food within the meaning of item 7 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941, and is exempt from taxation. Cooking is a process which consists of the preparation of food by action of heat.—*SANTOSH KUMAR GHOSH v. THE COMMERCIAL TAX OFFICER AND OTHERS* [1965] 16 S.T.C. 931 (Cal.).

Exemption—Cooked food (other than cooked food sold in sealed containers) including sweet meats and other confectionery—"Sealed containers", meaning of—U.P. Sales Tax Act (15 of 1948), Sec. 4—Notification No. S.T. 118/X-929-48 dated June 7, 1948.—*COMMISSIONER OF SALES TAX, U.P. v. G. G. INDUSTRIES, AGRA* [1968] 21 S.T.C. 63 (S.C.).

CO-OPERATIVE SOCIETY

(See also CLUB)

Co-operative society distributing goods among members—*Whether sale by society to members*.—Certain persons who wanted to purchase brass and who were members of a co-operative society each contributed some money according to his needs and pooled them for purchasing brass through the agency of the co-operative society. The society obtained the brass from a company and distributed the quantity acquired in proportion to the amount that was contributed by the members for the purchase: *Held*, that there was no sale by the society to the members.—*THE STATE OF MADRAS v. AZZARAM BRASS MANUFACTURERS' ASSOCIATION* [1954] 5 S.T.C. 284 (Mad.).

—The transfer of goods by a co-operative society to its members would not constitute sale within the meaning of the Madras General Sales Tax Act, 1939.—*MADRAS CO-OPERATIVE MILK SUPPLY UNION LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 271 (Mad.).

Co-operative society—Supply of refreshments to members—*Whether sale*—*Provisions deeming such society to be "dealer"*—*Whether ultra vires State Legislature*.—The respondent, a co-operative society registered under the Madras Co-operative Societies Act, 1932, was formed with the object of providing a canteen for supplying refreshments to the employees of a limited liability company without a profit-motive. The question was whether it was liable to pay sales tax under the Madras General Sales Tax Act, 1959, on its turnover from refreshments supplied to its members. There was nothing on record to show that the society was acting merely as an agent of its members in providing facilities for making food available to the members: *Held*, that the respondent was liable to pay sales tax on its turnover under the Madras General Sales Tax Act, 1959. The Explanation to section 2(g) of the Madras General Sales Tax Act, 1959, is not *ultra vires* the Madras State Legislature. A scheme for supplying goods to its members by a society for price may partake of the activity of the nature of adventure or concern in the nature of trade, even if the activity is not actuated by a profit-motive. The respondent-Society which had according to its object of incorporation made arrangements for the supply and distribution of refreshments to its members without a profit-motive might be regarded as carrying on trade and would on that account fall within the definition of "dealer" within the meaning of section 2(g). A co-operative society registered

under the Madras Co-operative Societies Act, 1932, is by virtue of section 20 of that Act a body corporate with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Such a co-operative society which carries on the business of supplying goods to its members for cash or deferred payment falls within the definition of "dealer" in section 2(g). By the Explanation to section 2(g) the State Legislature has merely clarified that a taxable entity will be regarded as a dealer within the meaning of the Act even though it buys, sells, supplies or distributes goods from or to its members, whether in the course of business or not; it is not intended by the Explanation to declare all transactions of the taxable entity with its members to be transactions of sale or purchase. The Explanation is a part of the definition of "dealer" and not of "sale". For the purpose of levying sales tax it was open to the Legislature to devise a definition of the word "dealer" and further to provide that certain bodies shall be deemed to be dealers within the meaning of the Act. For turnover from a transaction to be taxable under the Act, the transaction must have four constituent elements, *viz.*, (1) parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) price in money paid or promised. When a co-operative society supplies to its members for a price refreshments in the canteen maintained by it, the four constituent elements of sale are normally present: the parties are competent to contract; there is mutual assent; refreshments which belonged absolutely to the society stand transferred to the buyer, and price is either paid or promised. A registered society is a body corporate with power to hold property and is capable of entering into contracts. It cannot be assumed that property which it holds is property of which its members are owners. The property in law is the property of the society. The members are undoubtedly entitled to compel the society to act according to its constitution and to apply the property for the purposes for which it is held, but on that account the property of the society cannot be treated as the property of the members. The society is a person: the property in the refreshments which it supplies to its members is vested in the society and when refreshments are supplied for a price paid or promised transfer of property in the refreshments results. In the case of an unincorporated society, club or a firm or an association ordinarily the supply and distribution by such a

society, club, firm or an association of goods belonging to it to its members may not result in sale of the goods which are jointly held for the benefit of the members by the society, club, firm or association, when by virtue of the relinquishment of the common rights of the members the property stands transferred to a member in payment of a price, and the transaction may not *prima facie* be regarded as a "sale" within the meaning of the Act. [The Supreme Court did not consider the question whether Explanation (1) to section 2(n) was *ultra vires*, since the transactions in this case fell within the substantive part of the definition of "sale".] Decision of the Madras High Court reversed. *Trebanog Working Men's Club and Institute Ltd. v. Macdonald* ([1940] 1 K.B. 576), *Graff v. Evans* ([1882] 8 Q.B.D. 373), *Metford v. Edwards* ([1915] 1 K.B. 172) and *National Sporting Club Ltd. v. Cope* [1900] (82 L.T. 352) distinguished. *Young Men's Indian Association (Regd.), Madras v. Joint Commercial Tax Officer* [1963] (14 S.T.C. 1030) overruled. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353; [1959] S.C.R. 379), *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [1963] (14 S.T.C. 316; [1963] Supp. 2 S.C.R. 459) and *Bhopal Sugar Industries Ltd. v. D. P. Dube, Sales Tax Officer, Bhopal* [1963] (14 S.T.C. 406; [1964] 1 S.C.R. 481) referred to.—DEPUTY COMMERCIAL TAX OFFICER, SAIDAPET, MADRAS, AND ANOTHER *v.* ENFIELD INDIA LTD. CO-OPERATIVE CANTEN LTD. [1968] 21 S.T.C. 317 (S.C.).

Co-operative Society—Scope of definition of "dealer"—*Society registered under Co-operative Societies Act, 1925—Whether should carry on business to become a dealer—Society formed for transporting fish belonging to members—Purchase of ice for preserving fish—Amounts received from members for supply of ice—Liability to sales tax.*—A society registered under the Bombay Co-operative Societies Act, 1925, and a body corporate by virtue of the provisions of section 23 of that Act falls within the substantive opening portion of the definition of the term "dealer" in section 2(11) of the Bombay Sales Tax Act, 1959, and therefore the activity of the society should be carried on as a business in order to bring it within the definition of the term "dealer" in section 2(11) of the Act. The last part of the definition of the term "dealer" in section 2(11) relating to society, club or other association of persons applies to unincorporated bodies and the term "persons" as used in that part can only mean persons in the natural or physical sense of the term and does not include unincorporated bodies. The term "persons" in the concluding portion of section 2(11) is not

used in the sense in which it is defined in section 2(19). The applicant was a society registered under the Bombay Co-operative Societies Act, 1925, and was a body corporate by virtue of the provisions of section 23 of that Act. The object of the society was to transport fish belonging to the members of the society from fishing centres to the market and vice versa. For the purpose of transporting fish, the society had to maintain a fleet of transport vehicles and, for preserving the fish in the course of transport, the society used to purchase ice, and the members, whose fish was transported, were charged for the quantity of ice required in respect of their baskets of fish. For the year 1959-60, the purchase of ice by the society was of the value of Rs. 20,534 while the society received from its members a sum of Rs. 32,819 for the supply of ice. On the question whether the society fell within the definition of the term "dealer" in section 2(11) of the Bombay Sales Tax Act, 1959: *Held*, (1) that the term "person" occurring in the substantive part of the definition of the term "dealer" in section 2(11) included the applicant-society, which was a juristic person or a legal entity, and therefore the activity of the society should be carried on as a business in order to bring it within the definition of the term "dealer" in section 2(11); (2) that the business of the applicant-society was to transport fish belonging to its members and it supplied ice only for the purpose and in the course of carrying on that business. It could not be said that the society supplied ice to its members with the intention of carrying on business in ice and therefore the society was not a "dealer" within the definition of that term in section 2(11) in regard to the supply of ice by it to its members.—*VERSOVA KOLI SAHAKARI VAHATUK SANGH LTD. v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 116 (Bom.).

Supply of goods by co-operative society to its members—Whether sale—Liability to sales tax—Definition of dealer which includes a co-operative society—Whether ultra vires Legislature—Profit-motive—Whether necessary—Validity of section 9, Orissa Co-operative Societies Act, 1962.—A co-operative society registered under the Orissa Co-operative Societies Act, 1951, is a distinct legal entity having rights to possess and transfer properties, and the supply of articles by the society to its members for a price has the effect of transferring the general property in the goods by the society to the members for a consideration and will therefore be a sale as defined in the Orissa Sales Tax Act, 1947. The definition of the expression "dealer" in section 2(c) of the Act in so far as it purports to include a co-operative society which

purchases goods from or sells or supplies goods to its members is not invalid or *ultra vires* the State Legislature. Even in the absence of a profit-motive an activity by a co-operative society of supplying goods to its members for a price may be in the nature of trade. The existence of a profit-motive is not essential for creation of a taxable entity. A law providing for incorporation of co-operative societies is not outside the competence of the State Legislature. Under Entry 32 of List II of the Seventh Schedule of the Constitution, the State Legislature is competent to make a provision like section 9 of the Orissa Co-operative Societies Act, 1962, for incorporation.—*INDAL EMPLOYEES' CO-OPERATIVE SOCIETY LTD. v. STATE OF ORISSA AND TWO OTHERS* [1968] 22 S.T.C. 460 (Ori.).

Whether members of co-operative society liable for sales tax levied on society—Whether tax can be recovered personally from members by coercive methods.—In the case of a co-operative society, wherein the liability of the members is limited, the members of the society are not liable for the payment of the sales tax levied on the society and no amount on this account can be recovered from them either by the attachment and sale of their properties or by their arrest or any other coercive method. *Surinder Nath Khosla v. Excise and Taxation Commissioner, Punjab, and Another* [1964] (15 S.T.C. 838) applied.—*THE ASHOKA BRICK KILN CO-OPERATIVE INDUSTRIAL SOCIETY LTD., FARIDABAD v. STATE OF PUNJAB AND ANOTHER* [1969] 23 S.T.C. 43 (Punj. & Haryana).

COPRA

(See COCONUT page 265 *supra*)

COSMETICS

"Cosmetics", "toilet articles", meanings of—Powders used for dusting body after bath and also used as face powder—Whether cosmetics or toilet article.—The expression "toilet articles" in entry 39 of Schedule B of the Bombay Sales Tax Act, 1953, is intended for a wider range of objects than is covered by the expression "cosmetics" in entry 66. Cosmetics may legitimately be regarded as a specific case of toilet articles but the more specific provision in entry 66 rather than entry 39 should be applied to cosmetics. The word "cosmetics", as its root meaning shows, is connected with the idea of beauty or beautifying, while a powder intended essentially to be used for dusting the body or any part of it after bath need not have that significance: *Held*, that the talcum powders sold by the appellants under the names "Roopkala Bouquet", "Roopkala Ordinary" and "Roopkala Medium" were to be assessed under entry 66

and not under entry 39.—**ROOPKALA INDUSTRIES v. THE STATE OF BOMBAY** [1967] 7 S.T.C. 557.

"Toilet articles" and "soaps"—Meanings of—Badshahi soap and Badshahi powder used as depilatory—Whether toilet articles or soaps.—A depilatory is used for the purpose of cleansing and grooming one's person and it is a toilet article. "Badshahi soap" and "Badshahi powder", which are used as depilatory, are therefore toilet articles within the meaning of entry 6 in Schedule I of the Bombay Sales Tax Act, 1946. They are not soaps and are not taken out of the category of toilet preparations enumerated in that entry and are therefore liable to special sales tax.—**C. C. MAHAJAN AND CO. v. THE STATE OF BOMBAY** [1958] 9 S.T.C. 133 (Bom.).

Hairpins made of iron—Whether toilet requisites.—The words "toilet requisites" in item 51 of the First Schedule to the Madras General Sales Tax Act, 1959, prior to its amendment by Amendment Act 6 of 1963 should be given a restrictive meaning and should be taken to include only goods of the nature enumerated in that item. Therefore iron hairpins could not be included in the list of items enumerated in item 51 and the turnover relating to iron hairpins should be assessed only under item 23.—**THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION, MADRAS-7 v. AMBIKA STORES** [1963] 14 S.T.C. 688 (Mad.).

Maha Bhringraj hair-oil—Whether "toilet article" or "medicinal preparation".—The Maha Bhringraj hair-oil manufactured by the assessee dealing in Ayurvedic preparations is a "toilet article" falling under entry 11 of Schedule I, Part I, of the C. P. and Berar Sales Tax Act, 1947, and, therefore, liable to tax at the rate of one anna in a rupee under section 5(1)(a). There is no justification for treating the oil as a "medicinal preparation" merely because the assessee manufactures the oil following a formula given in an Ayurvedic treatise and the fragrance of the oil is disagreeable to some people. A "toilet preparation" is any preparation which is intended to affect, and conceivably to improve the bodily appearance. The words "cosmetics" and "toilet", being words of everyday use, must be construed not in any technical or scientific sense, but as understood in common parlance and in commercial language. The hair-oil manufactured by the assessee is a "toilet article" and falls also within the meaning of the term "cosmetics".—**COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. SHRI SADHNA AUSHADHALAYA** [1963] 14 S.T.C. 813 (M.P.).

Tooth powder—Whether comes under "powders, cosmetics or toilet requisites".—Tooth powder does not come within the scope of item 51 of the First Schedule to the Madras General Sales Tax Act, 1959. It is mostly used for cleaning the teeth and not for enhancing the beauty of a person and it cannot be included in the category of goods such as "powders, cosmetics or toilet requisites" mentioned in that item. *Deputy Commissioner of Commercial Taxes, Madras Division, Madras-7 v. Ambika Stores* [1963] (14 S.T.C. 688) followed.—**V. P. SOMASUNDARA MUDALIAR v. THE STATE OF MADRAS** [1963] 14 S.T.C. 943 (Mad.).

Plastic safety-razor—Whether cosmetic or toilet requisite—Rate of tax.—A plastic safety-razor is not a "cosmetic" or a "toilet requisite" within the meaning of item 6 of the Notification No. 905/X dated 31st March, 1956, issued by the U.P. Government under section 3-A of the U.P. Sales Tax Act, 1948, and cannot therefore be taxed at the rate of one anna per rupee under that notification but is liable to be taxed at the lower rate under the general charging section 3. On the rule of *ejusdem generis* "toilet requisites" must be confined to those articles which are of the same genus as "cosmetics". A safety-razor with or without a blade is not of the same genus as "cosmetic" though it may be a "toilet requisite" within the wider meaning of the term. **BEG, J.**—The literal rule of interpretation is enough to meet cases of interpretation where no complexities are present. But, in a case where the situation is complicated by features, which make it impossible to apply the literal rule reasonably, other rules of interpretation which may be applicable have to be used.—**PLASTIC PRODUCTS LTD. v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW** [1967] 19 S.T.C. 480 (All.).

"Cosmetics", "toilet", meanings of—Safety-razor blade—Whether cosmetic or toilet article—Rate of tax.—The articles covered under entry 31 of Schedule II, Part II, of the Madhya Pradesh General Sales Tax Act, 1958, are not all articles which may be somehow connected with the toilet of a person but which are of the same genus as perfumery, cosmetics etc. The words "cosmetics" and "toilet", being words of everyday use, must be construed as understood in common parlance. Therefore, a safety-razor blade cannot be interpreted to mean either as an item of cosmetic or an article of toilet and is not included in entry 31 of Schedule II, Part II. The sale of safety-razor blades can be taxed only under entry 1, Schedule II, Part VI, of the Madhya Pradesh General Sales Tax Act, 1958.—**COMMISSIONER OF SALES**

TAX, MADHYA PRADESH *v.* SUBHASH STORES, RANIPURA, INDORE [1968] 22 S.T.C. 9 (M.P.).

Tooth powder—*Whether toilet article*—“Vicco Vajradanti”, a dentifrice in the form of a powder used for cleaning teeth, is a toilet article and is included in entry 39 of Schedule B to the Bombay Sales Tax Act, 1953.—COMMISSIONER OF SALES TAX *v.* VICCO LABORATORIES [1968] 22 S.T.C. 169 (Bom.).

COSTS

Power of appellate authorities to award costs.
—See under APPEALS.

COTTAGE INDUSTRIES

(See EXEMPTIONS)

COTTON

Absorbent cotton wool—*Whether “raw cotton”*.—Absorbent cotton wool prepared by cleaning, boiling, bleaching, drying and carding the ginned cotton, and sold as surgical cotton is not “raw cotton (whether ginned or unginned)” within the meaning of item 1 of Schedule B to the Bombay Sales Tax Act, 1953, as amended by Act 10 of 1954, and it is therefore liable to tax under the residuary entry covered by item 80 of Schedule B. Item 1 of Schedule B would only include raw cotton, that is, cotton in its natural or nearly natural form in the ginned or unginned state, and not cotton which has been converted into specific different products after being subjected to various processes.—COMMISSIONER OF SALES TAX, MAHARASHTRA STATE, BOMBAY *v.* FAIRDEAL CORPORATION LTD. [1962] 13 S.T.C. 750 (Mah.).

Cotton and cotton seeds—Whether two different goods—Dealer in cotton—Taxation of cotton at purchase point and of cotton seeds at sale point—*Legality*—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 5, 6; Sch. II, item 23; Sch. IV, item 5.—KOTAK AND COMPANY *v.* THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 709 (A.P.).

Cotton fabrics—*Braided cords*—*Whether cotton fabrics*—*Whether inter-State sales of braided cords exempt from sales tax*.—Braided cords are not laces but a variety of textile within the meaning of entry 4 of the Third Schedule to the Madras General Sales Tax Act, 1959. Although the exemption allowed by section 8, with reference to entry 4 in the Third Schedule, will not ensure to exempt inter-State sales, braided cords can be considered as cotton fabrics within the meaning of section 14(ii-a) of the Central Sales Tax Act, 1956, and are therefore declared goods. Inter-State sales of declared goods fall within the ambit of section 8(2) of the Central Act and they

will be liable to charge only at the rate applicable to the sale or purchase of such goods inside the appropriate State. Inside sales of braided cords being totally exempt from tax under entry 4 of the Third Schedule to the Madras Act, inter-State sales of braided cords are also not exigible to tax. *The Government of Madras v. Madurai Braided Cord and Tape Producers Co-operative Industrial Society, Madurai* [1968] (21 S.T.C. 451) referred to.—THE GOVERNMENT OF MADRAS *v.* MADURAI BRAIDED CORD AND TAPE PRODUCERS CO-OPERATIVE INDUSTRIAL SOCIETY [1968] 22 S.T.C. 470 (Mad.).

Cotton fabrics—Cut pieces from *takas* of *malmal* and *voil* cloth sold as sarees and ladies' underwear after doing embroidery work on those pieces—*Whether cotton fabrics*.—PRAVIN BROS. *v.* THE STATE OF GUJARAT [1964] 15 S.T.C. 478 (Guj.).

Cotton seed oil—Whether an edible oil.—See KISHENLAL OIL MILLS, HYDERABAD *v.* COMMISSIONER OF SALES TAX, HYDERABAD [1955] 6 S.T.C. 650 (Hyd.).

Cotton cloth—Meaning of—Whether includes sarees and dhoties.—See CLOTH, page 255 *supra*.

Cotton waste purchased from spinning mills—*Levy of tax on such purchase on the ground that it contains cotton*—*Legality*.—Since the two terms “cotton” and “cotton waste” have come to be associated in the trade with distinct meanings, and with distinct incidents of marketability, it will be more appropriate to confine the provision for single point levy in the Madras General Sales Tax Act, 1939, and the Rules framed thereunder in regard to the commodity known as cotton, to that form of it which has not entered a mill and come out of it as a waste product. Once it has entered a mill and been used in the process of manufacture and has emerged as a waste product, it has lost its character as cotton for the purpose of marketability, and is a different commodity, namely, cotton waste. The sales tax assessment being intended primarily for assessment of dealers engaged in the trade, the Court cannot dissociate the meaning which a particular commodity has acquired in the market, for the purpose of identifying the commodity for levy of sales tax. The proper rule in such cases will be to give to the commodity the particular meaning, which the buyer and the seller in the market usually give to it, unless the statute has taken care to prescribe any special marks of description or identification. If the entire cotton waste purchased by an assessee was from the spinning mills, viewing it as cotton and subjecting it to a fresh taxation on the ground that he was proposing to export it, would also violate section 5(ii) of the Madras General Sales Tax Act, 1939, which

prescribed only a single point levy.—SAPT TEXTILE PRODUCTS (INDIA) PRIVATE LTD., BOMBAY-1 *v.* THE STATE OF MADRAS [1965] 16 S.T.C. 267 (Mad.).

Cotton waste—Cotton waste is a bye-product which comes out in the process of manufacture as a result of raw cotton being subjected to various processes and cannot, therefore, be regarded as "raw cotton (whether ginned or unginned)" within the meaning of entry 1 of Schedule B to the Bombay Sales Tax Act, 1953, and since there is no other specific entry covering cotton waste, it must fall within the residuary entry 80 of Schedule B.—ARVIND MILLS LTD. *v.* STATE OF GUJARAT [1966] 18 S.T.C. 311 (Guj.).

Cotton—Ginned and unginned cotton—Person buying raw cotton and selling, after ginning, ginned cotton and cotton seed—Imposition of tax on purchase and sale transactions inside State—Legality—Provisions of East Punjab Act imposing such tax—Whether contravene sections 14 and 15, Central Sales Tax Act, 1956—Validity—Ginning process—Whether can be deemed manufacture—Imposition of similar tax on (1) persons purchasing oil-seeds, converting them into oil and selling oil, and (2) on persons purchasing iron scrap and selling finished goods—Legality—East Punjab General Sales Tax Act (46 of 1948), Section 2(ff), (i)—East Punjab General Sales Tax (Amendment) Act (7 of 1958)—Constitution of India, Article 286(3).—RAGHBIR CHAND SOM CHAND *v.* EXCISE AND TAXATION OFFICER, BHATINDA AND OTHERS [1960] 11 S.T.C. 149 (Punj.).

Cotton—Purchase of raw cotton inside State for ginning and ginned cotton sent to another State for manufacture of cloth—Act and Rules amended imposing condition that goods purchased must be for use by dealer "in the manufacture in the State of Punjab for sale"—Failure to issue new certificate of registration carrying out amendment—Right to claim exemption—Restrictions in section 15, Central Act—State Act imposing higher rate of tax on declared goods—Whether inoperative—Punjab General Sales Tax Act (46 of 1948), Secs. 5(2)(a)(ii), 6, 7—Punjab General Sales Tax Rules, 1949.—MODI SPINNING AND WEAVING MILLS CO. LTD. *v.* COMMISSIONER OF SALES TAX, PUNJAB, AND ANOTHER [1965] 16 S.T.C. 310 (S.C.).

Cotton yarn—Company manufacturing and selling cotton yarn—Goods which the company can purchase at concessional rate of tax.—See J. K. COTTON SPINNING AND WEAVING MILLS CO. LTD. *v.* SALES TAX OFFICER, KANPUR, AND ANOTHER [1964] 15 S.T.C. 711 (All.) and [1965] 16 S.T.C. 563 (S.C.).

Cotton—Single point at point of last purchase—Stock held on last day of assessment year—Whether can be assessed—Madras General Sales Tax Act (1 of 1959), Sec. 4, Sch. II, item 2.—THE STATE OF MADRAS *v.* T. NARAYANASWAMI NAIDU AND ANOTHER [1968] 21 S.T.C. 1 (S.C.).

Cotton yarn—Inter-State sales—Head office inside State and branches outside State—Cotton yarn delivered outside State taxed under Central Act—Same yarn brought inside State and sold locally—Whether such sale first sale liable to tax under Madras Act—Madras General Sale Tax Act (1 of 1959), Secs. 3, 4, 4-A, 6, Second Schedule, item 3—Central Sales Tax Act (74 of 1956), Secs. 3, 4, 14, 15.—MADURA SOUTH INDIA CORPORATION PRIVATE LIMITED *v.* THE JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION III, MADRAS [1968] 21 S.T.C. 163 (Mad.).

Cotton—Power to enact laws having retrospective effect prior to date when Legislature came into existence—Validity of Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967—Whether has fixed the stage for levy of tax on declared goods—Whether discriminates between imported and local cotton—Central Sales Tax Act, 1956—Whether *ultra vires*—Punjab General Sales Tax Act (46 of 1948), Secs. 2(d), (ff), (h), (i), 4(2), (3), (5), 4A, 5—Central Sales Tax Act (74 of 1956), Secs. 14, 15.—SHRI LAXMI COTTON TRADERS PVT. LTD., HANSI *v.* THE STATE OF HARYANA AND ANOTHER [1968] 22 S.T.C. 335 (Punj. & Haryana).

—Whether section 5(3) of Punjab Act as amended by Amendment and Validation Act, 1967, is violative of Articles 303 and 14, Constitution of India, or section 15, Central Sales Tax Act, 1956—Whether stage of levy for cotton has been fixed—Purchase by "the last dealer liable to pay tax under the Act"—Meaning of—Punjab General Sales Tax Act (46 of 1948), Sec. 5(2), (3)—Central Sales Tax Act (74 of 1956), Sec. 15—Punjab General Sales Tax (Amendment and Validation) Act (7 of 1967).—NIAMAT RAI MILKH RAJ AHUJA *v.* STATE OF PUNJAB AND ANOTHER [1968] 22 S.T.C. 365 (Punj. & Haryana).

—See also BHAWANI COTTON MILLS LTD. *v.* THE STATE OF PUNJAB AND ANOTHER [1967] 20 S.T.C. 290 (S.C.).

Cotton yarn—Sale of goods actually in Cochin State—First dealer in cotton yarn—Purchase in Cochin State and sale in Madras State—Liability to sales tax—Scope of exemption under Notification No. 1011 dated 28th May, 1949—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, Rules 4(1), 4A(1).—THE ALAGAPPA

CORPORATION *v.* THE STATE OF MADRAS [1955] 6 S.T.C. 649 (Mad.).

Cotton cloth and yarn—Tax on single point payable by manufacturer—Manufacturing company transferring goods to its depots at one price and depots selling goods to consumers at higher price—Whether company liable to pay tax on turnover of depots.—VIKRAM COTTON MILLS, LUCKNOW *v.* COMMISSIONER OF SALES TAX, U.P. [1960] 11 S.T.C. 120 (All.).

Cotton yarn and cotton cloth—*Prescription of single point by notification instead of by rules—Whether U.P. Sales Tax (Amendment) Act (40 of 1952) has validated Notification No. S.T. 117/X-923-1948 dated 8th June, 1948—Whether Amendment Act contravenes Article 286(3), Constitution.*—Section 3-A of the U.P. Sales Tax Act, 1948, provided as follows:—“(1) Notwithstanding anything contained in section 3, the State Government may by notification in the Official Gazette declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as may be prescribed. (2) If the State Government makes a declaration under sub-section (1) it may further declare that the turnover in respect of such goods shall be liable to tax at such rate not exceeding 7 nP. per rupee as may be specified.....” Section 2(f) of the Act defined “prescribed” as meaning prescribed by rules. The State Government issued Notification No. S.T. 117/X-923-1948 dated 8th June, 1948, laying down that in exercise of the powers conferred by section 3-A the Governor had declared that the proceeds of sale of cotton yarn and cotton cloth manufactured by mills in U.P. would be subjected to sales tax at the point of sale by the manufacturer and at the rate of six pies per rupee. Realising that the prescription of single point in the series of sales by a *notification* instead of by a rule was invalid, the Legislature enacted the U.P. Sales Tax (Amendment) Act (40 of 1952), section 4 of which provided as follows:—“In sub-section (1) of section 3-A of the Principal Act for the words ‘as may be prescribed’ the words ‘as the State Government may specify’ shall be, and be deemed always to have been, substituted.” Section 8 validated all assessments made and actions or proceedings taken in accordance with the provisions of the unamended Act. The petitioner contended that Notification No. S.T. 117/X could not be a valid authority for the levy of tax at the point of sale by the manufacturer and that the U.P. Sales Tax (Amendment) Act, 1952, was void as it authorised the imposition of tax on the sale of goods declared essential by the Essential

Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, without receiving the assent of the President as required by Article 286(3) of the Constitution: *Held*, that the effect of the legal fiction in section 4 of the U.P. Sales Tax (Amendment) Act, 1952, was to validate the notification, that the Amendment Act of 1952 was not hit by Article 286(3) inasmuch as it was not a law imposing or authorising the imposition of sales tax and that the levy of sales tax under the notification was therefore valid. DESAI, C.J.—Notification No. S.T. 117/X was not null and void even according to section 3-A as it stood on 8th June, 1948, when it was issued. The effect of the legal fiction in section 4 of the Amendment Act, 1952, was to validate the notification even if it had been invalid because of the particular single point not being prescribed by a rule. If the effect of section 4 was not to render the notification valid section 8 would not be of any assistance because no assessment made or tax levied or action or proceedings taken for realisation of tax could be valid unless the notification was valid. GANGESHWAR PRASAD, J.—Section 8 of the Amendment Act also had the effect of validating the notification although section 4 by its own force was quite adequate for that purpose. *Firm Bangali Mal Satish Chandra Jain v. Sales Tax Officer* [1958] (9 S.T.C. 492) distinguished but propositions of law laid down therein overruled.—RAM CHAND TEXTILES *v.* SALES TAX OFFICER, HATHRAS [1964] 15 S.T.C. 340 (All.) (F.B.).

Licence to deal in cotton yarn—Sale at black market prices—Discovery of two sets of accounts—Assessment to tax without cancelling licence—Validity.—THE PROVINCE OF MADRAS *v.* BALAKRISHNA CHETTY & SONS & Co. [1955] 6 S.T.C. 415 (Mad.) affirmed by Supreme Court in [1961] 12 S.T.C. 114 (S.C.).

Purchasers of cotton—Rule 4-A(iv)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules which imposes tax on purchasers—Whether valid.—SRIRAM VENKATA SUBBARAO & SON *v.* STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 646 (A.P.).

Purchase of cotton by spinning mill—*Whether purchase exempt under Article 286(1)(b) or 286(2).*—The assessee, a spinning mill at Tirupur in the Madras State, was assessed to tax under rule 4-A(iv) on its purchases of cotton which had been imported from Africa by certain Bombay dealers. The assessee intimated its requirements to the Bombay dealers who placed orders with the suppliers in Africa and directed the shipments from African ports to Cochin. The assessee, in the meantime, obtained the necessary

transport licence. The shipping documents were in the name of the Bombay dealers who sent them to their clearing agents at Port Cochin. The clearing agents presented the shipping documents, cleared the goods through the customs, despatched the goods by rail to the assessee at Tirupur and sent the railway receipts through bank. The assessee paid the price into the bank against delivery of railway receipts. The question was whether the assessee was not liable to be taxed by virtue of the provisions of either Article 286(1)(b) or Article 286(2) of the Constitution: *Held*, (1) that the purchases of cotton effected by the assessee were made after the cotton had been imported into India by the Bombay dealers and after the cotton had crossed the customs frontiers and they were therefore not entitled to the exemption under Article 286(1)(b); (2) that the purchases satisfied both the requirements of the Explanation to Article 286(1)(a), inasmuch as the actual delivery to the assessee as buyer was only at Tirupur and the delivery was for consumption within the Madras State. Therefore the Madras State had the right to tax the sales, once the Parliament lifted the ban on taxation of sales or purchases in the course of inter-State trade or commerce. Rule 4-A(iv)(a) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, provided that "in the case of all cotton (including kapas) sold to a spinning mill in the State, the tax shall be levied from the spinning mill on the amount for which it is bought by it": *Held*, that the rule was not in conflict with any provisions of section 5(ii) of the Madras General Sales Tax Act, 1939, and was *intra vires* the powers of the rule-making authority. If a spinning mill bought yarn in the first instance for spinning, but subsequently sold that yarn without spinning, that spinning mill was not bound to disclose the purchases of yarn in its return, because what is taxable under rule 4-A(iv)(a) is the purchase of yarn by a spinning mill for spinning.—*DHANALAKSHMI MILLS LTD. v. THE STATE OF MADRAS* [1960] 11 S.T.C. 306 (Mad.).

Purchases by spinning mill licensed as dealer from unlicensed dealers—Whether liable to tax.—Rule 4-A(iv) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, prescribed, as required by section 5(ii) of the Madras General Sales Tax Act, 1939, the single point for the levy of sales tax on transactions in cotton and by virtue of rule 4(2) it was the purchaser of cotton that had to pay the tax and not the seller. But the applicability of rule 4-A(iv) should not be confined to transactions between licensed dealers and therefore purchases of

cotton by a spinning mill, which was a licensed dealer, from unlicensed dealers were within the scope of the taxing provision. Rule 4-A(iv) was also *intra vires* and enforceable. The tax liability of a dealer declared by clauses (a) and (b) of rule 4-A(iv), without any reference to the question whether the transactions were between licensed or unlicensed dealers, would be enforceable even though the rule-making authority failed to discharge its statutory obligation to prescribe a single point for other types of transactions in cotton.—*MADURA MILLS CO. LTD. v. STATE OF MADRAS* [1960] 11 S.T.C. 622 (Mad.).

Single point of taxation—Notification under section 3-AA, U.P. Act, fixing rate of tax on cotton yarn—Validity.—In respect of cotton yarn, section 3-AA of the U.P. Sales Tax Act, 1948, fixed the single point of taxation but it did not fix the rate of tax and did not authorize the State Government to fix it by a notification. Section 3-AA also took away the power of the State Government under section 3-A to fix the single point and rate of tax in respect of cotton yarn. Therefore Notification No. S.T. 2934/X-902(7)-56 dated 1st August, 1958, and Notification No. 4921/X-1035(42)-60 dated 15th November, 1961, fixing the rate of tax in respect of cotton yarn were invalid and there being no rate of tax fixed for the turnover of cotton yarn, dealers in cotton yarn could not be assessed to tax. The provisions of section 3 must be read with section 3-AA or section 3-A and to the extent that section 3-A or 3-AA confines the point of taxability to a specified single point of sale and provides for the rate of tax, the corresponding provisions in section 3 must be superseded.—*RAM NIWAS SANT LAL AND OTHERS v. SALES TAX OFFICER, BASTI, AND ANOTHER* [1964] 15 S.T.C. 523 (All.).

Sale of cotton—Sale failing under Explanation to Article 286(1)(a) of the Constitution—Effect of Sales Tax Laws Validation Act, 1956—Purchaser in delivery-cum-consumption State—Whether last purchaser of cotton—Liability to tax under Madras General Sales Tax Act, 1939.—*RAMASWAMI MUDALIAR & CO. v. STATE OF MADRAS* [1962] 13 S.T.C. 785 (Mad.).

Sale of excess cotton and cotton waste by company carrying on business of manufacturing cotton textiles and yarn—Liability to sales tax.—See *DEALER infra*.

COURT-FEE

Appeal to Appellate Tribunal against remand order—Proper court-fee payable.—The Sales Tax Officer assessed the petitioner to sales tax but

the first appellate authority set aside the order of assessment under section 23(2)(b) of the Orissa Sales Tax Act, 1947, and remanded the case for fresh assessment. Against the remand order the petitioner filed an appeal before the Sales Tax Tribunal under section 23(3)(a) after paying a fee of one rupee only. The Tribunal called upon the petitioner to pay a court-fee amounting to 5 per centum of the amount in dispute. Against this order the petitioner filed a writ application under Article 226 of the Constitution: *Held*, (1) that there can be no demand of tax or penalty until an assessment is made, and there is no assessment quantifying the liability after an original order of assessment is set aside on appeal and consequently there can be no demand of the tax until further assessment, if any, is made in pursuance of the remand order; (2) that as the petitioner did not admit that any amount was payable by him, there existed no difference between the amount demanded and the amount admitted. The difference was indeterminable at the stage when the appeal was filed before the Tribunal, and as no amount in dispute could be determined within the meaning of rule 85 of the Orissa Sales Tax Rules, 1947, the fee payable was only the minimum of one rupee. A writ of *certiorari* can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record.—*SRI GOVINDARAM SARAF v. STATE OF ORISSA* [1963] 14 S.T.C. 622 (Ori.).

Appeal against High Court judgment in one petition under Article 226 challenging various assessment orders—Court-fee payable.—Where a single petition is presented to the High Court under Article 226 of the Constitution of India challenging the validity of various assessment orders all together, there is only one proceeding. When an appeal is taken to the Supreme Court from the judgment of the High Court in such a petition there cannot be more appeals than one and the appellant is liable only to pay one set of court-fee and other charges as in a single appeal. *Lajwanti Sial's* case (Petition for Special Leave No. 673 of 1959) and *Kishinchand Chellaram's* case [1962] (46 I.T.R. 640) distinguished.—*CHANDRA BHAN GOSAIN v. THE STATE OF ORISSA AND OTHERS* [1963] 14 S.T.C. 918 (S.C.).

Commissioner—Revision against order of remand under Assam Sales Tax Act—Proper fee leviable.—Where in an appeal against an assessment order, the Appellate Assistant Commissioner directed that the assessee should be assessed afresh in the light of the order passed by him, the order of assessment had not become final and a petition for revision to the Commissioner would be, in

substance, against an order of remand. Such an order did not fall under clause (a) of rule 74 of the Assam Sales Tax Rules, 1947, but fell under the residuary clause (d) of that rule and the fee should be levied accordingly.—*BHARAT AUTOMOBILES, GAUHATI v. STATE OF ASSAM* [1957] 8 S.T.C. 537 (Assam).

Levy of court-fees on memorandum of appeal and revision petitions—Whether *ultra vires* State Government.—*CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1956] 7 S.T.C. 36 (Ori.) and [1960] 11 S.T.C. 716 (S.C.).

Proper court-fee payable for suit for declaration that assessment is illegal and for injunction.—The petitioner filed a suit in the District Munsiff's Court for (a) a declaration that the order of assessment of the Deputy Commercial Tax Officer so far as it related to his commission business for the year 1944-45 was illegal; (b) for an injunction restraining the defendants from collecting sales tax on his business for the year 1944-45; and (c) for a further injunction restraining the defendants from levying sales tax for subsequent years. In respect of relief (a) he paid a court-fee of Rs. 15 under Article 17A(1) of the Court-fees Act and in respect of reliefs (b) and (c) he paid a court-fee under section 7(iv) valuing the subject-matter at Rs. 10 each. The question arose whether the order of the Deputy Commercial Tax Officer was a decree and court-fee should therefore be paid under section 7(iv-A) on the *ad valorem* basis: *Held*, (1) that the order of the Deputy Commercial Tax Officer assessing the petitioner to sales tax could not be treated as a decree and section 7(iv-A) would not therefore apply; (2) that section 7(iv)(c) applied to the case and the reliefs should be valued under that section and court-fee should be fixed on that value and that the value fixed by him for the purpose of that section was to be the value for the purpose of jurisdiction under section 8 of the Suits Valuation Act. The plaintiff was given liberty to amend his plaint for valuing the reliefs under section 7(iv)(c).—*KALLA SURAYYA AND SONS v. PROVINCE OF MADRAS* [1949] 1 S.T.C. 214 (Mad.).

Revision—Fee of Rs. 100 paid along with petition under section 12-B—Whether can be refunded when petition is withdrawn.—There is no provision in the Madras General Sales Tax Act, 1939, enabling an assessee to obtain a refund of the fee of Rs. 100 paid along with a petition filed in the High Court under section 12-B of the Act. Nor is there any provision under the Sales Tax Act stating that any fee paid shall not be refunded. The provisions of the Court-fees Act are not applicable to such petitions. The High Court

however, can, in the exercise of its inherent powers, direct a refund of the fee, where the revision petition is sought to be withdrawn before it takes effect by being taken on file and numbered.—*M. S. BALAKRISHNA CHETTY v. STATE OF MADRAS* [1962] 13 S.T.C. 398 (Mad.).

Refund of court-fee in revision cases—Section 64, Andhra Court-fees and Suits Valuation Act, 1956, cannot govern tax revision cases, and there is no specific provision in the Sales Tax Act for refund of court-fees in revision cases while such a power is specifically conferred by a rule made under the Sales Tax Act with regard to appeals disposed of by the Tribunal. Section 12-B, sub-section (4)(a), of the Sales Tax Act does not enable the High Court to make an order for refund of court-fee and the inherent power to make an order for refund of court-fee must be confined to the cases authorised by precedents and could not arbitrarily be extended.—*SRI RAMAKRISHNA COMMERCIAL SOCIETY v. STATE OF ANDHRA* [1961] 12 S.T.C. 31 (A.P.) (F.B.).

CUSTOMS DUTY (See SALES TAX)

DAMAGES

Damages for breach of contract—*Liability to sales tax*.—Damages received for breach of contract cannot be regarded as sale price.—*PUNAMCHAND v. THE STATE* [1951] 2 S.T.C. 14, at p. 16 (Nag.).

Damages for breach of contract—*Liability to sales tax*.—A liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. It would be contrary to all principles to hold that damages for breach of contract are liable to be assessed to sales tax on the ground that they are in the same position as sale price.—*THE SALES TAX OFFICER, PILIBHIT v. BUDH PRAKASH JAI PRAKASH* [1954] 5 S.T.C. 193 (S.C.).

Goods lost in transit—Levy of tax on amount received as damages.—See *NEWTON CHIKHLI COLLIERIES LTD. v. THE STATE* [1952] 3 S.T.C. 243.

DEALER (GENERAL PRINCIPLES)

Definition of dealer—*Scope of*—*No power to tax brokers*.—Under entry No. 48 in List II of the Seventh Schedule to the Government of India Act, 1935, tax is to be levied on "sale of goods" and the authority of the Provincial Legislature extended to the imposition of the tax on any transaction of sale of goods. The tax is laid on

a dealer under the Act and for this purpose the person sought to be taxed must carry on the business of selling goods, whether as principal or as an agent. Unless the assessee can be said to have carried on the business of selling the goods, whether as a principal or as an agent, the tax cannot be levied. The entry does not entitle the Provincial Legislature to tax brokers who may have assisted at a sale but have not sold the goods either as principal or as agent. The definition of dealer in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, does not include a broker.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR v. PANDURANG TUKARAM DALAL* [1956] 7 S.T.C. 76 (Nag.).

Amendment of definition in Bihar Act—The intention of section 2(i) of the Bihar Annual Finance Act, 1950, was not to effect a temporary amendment in the previous definition of the word "dealer" in section 2(c) of the Bihar Sales Tax Act, 1947. The amended definition was applicable to subsequent years also. Tax on sale of goods is a matter entirely within entry 54 of the State List and therefore an amendment to the definition of "dealer" in the Bihar Sales Tax Act, 1947, does not require the assent of the President.—*MOTIPUR ZAMINDARY v. STATE OF BIHAR* [1962] 13 S.T.C. 1 (S.C.).

—The Bihar Finance Act, 1950, by omitting the word "business" in the definition of "dealer" in the Bihar Sales Tax Act, 1947, did not seek to change the essence of the original definition, and the changed form of language should be taken in consistency with the original essence and the other unamended provisions of the Act. The definition of "dealer" as amended by the Bihar Finance Act, 1950, still means any person who sells or supplies any goods in connection with his business and therefore a casual sale of machineries by a dealer in coal is not liable to be included in the turnover of the dealer.—*COMMISSIONER OF SALES TAX, BIHAR v. BASTA COLLA COLLIERY Co. LTD.* [1968] 21 S.T.C. 454 (Pat.).

Essential features—The essential features that are present in the definition of "dealer" in the Madras General Sales Tax Act, 1939, are: (i) there must be a sale, and (ii) it must be in the course of carrying on the business of selling goods. (Definition of "dealer" in the Sales Tax Acts of India compared). The essential requisite of a "sale" as defined in the Madras General Sales Tax Act is a "transfer of property" in goods and this requirement is set out in the definitions of all the Sales Tax Acts. What is deemed to be a sale is enlarged by other explanations, but the

main definition is the same in all the Acts. The test to find out whether a transaction is a sale assessable to tax in a State is to take the definition and apply it with the aid of the Indian Sale of Goods Act. Except the States which have adopted the Madras definition of the word "dealer" *in toto*, the other States have made it clear in the definition itself that the dealer must be carrying on the business of selling in that State. Even under the Madras Act, the sale must be within the State or province so as to be taxable. The absence of the words "sales inside the State" found in the other Acts does not make a difference. The term "dealer" in the Madras General Sales Tax Act, 1939, will take in a commission agent also.—*INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 47 (Mad.).

—Under the Bengal Finance (Sales Tax) Act, 1941, unless the sales were effected by the dealer and the sale proceeds were received by him such sales could not be included in his taxable turnover and he would not be liable to pay sales tax thereon.—*MAHADAYAL PREMCHANDRA v. COMMERCIAL TAX OFFICER, CALCUTTA, AND ANOTHER* [1958] 9 S.T.C. 428 (S.C.).

—Under the provisions of section 5 read with section 2, clauses (c) and (j), of the Bombay Sales Tax Act, 1946, only those transactions, which were carried out as part of the business of the dealer, are liable to be taxed under the Act. If the sale is a casual sale having no connection with the business for which the dealer is registered or is liable to be registered, the sale price will not be liable to be included in the taxable turnover nor will the price liable to be taxed. In order to regard a transaction a part of a business, the test of volume and the degree of frequency of similar transactions must be fulfilled; and the fact that there has been a casual sale of a single item of the assets of the assessee does not make the sale a part of the business of the assessee.—*STEELAGE INDUSTRIES LTD. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 376 (Bom.).

—The object of the Bombay Sales Tax Act, 1946, is to tax only those sales which are effected by persons who carry on the business of selling or supplying goods. A person should either produce goods or purchase goods with the object ultimately of selling them. Unless that object is present and unless that intention is clear, the mere activity of selling or supplying would not constitute the carrying on of business of selling or supplying goods within the meaning of section 2(c).—*STATE OF BOMBAY v. AHMEDABAD EDUCATION SOCIETY* [1956] 7 S.T.C. 497 (Bom.).

—Under the Bombay Sales Tax Act, 1953, a person in order to become a dealer must carry on the business of selling or buying goods in the State of Bombay. Whether that business is carried on on his behalf or as a commission agent for another is immaterial for the purpose of the definition.—*STATE OF BOMBAY v. SISTA'S LTD.* [1957] 8 S.T.C. 593 (Bom.).

—A person does not necessarily fall within the definition of a "dealer" in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, merely because he sells or supplies commodities. In order to bring him within the definition it is additionally necessary to show that he carries on those activities as his business. While an agriculturist cultivating his lands engages himself in the business of agriculture, that is not the same thing as engaging in the business of sale or supply of agricultural produce. Again, an agriculturist may sell the produce from his lands but this activity cannot by itself be regarded as a business of sale or supply of agricultural produce; nor again would the two sets of activities taken together be said to constitute such a business, unless his primary intention in engaging himself in such activities was to carry on the business of sale or supply of agricultural produce.—*GIRDHARILAL JIWANLAL v. ASSISTANT COMMISSIONER OF SALES TAX (APPEALS), NAGPUR, AND ANOTHER* [1957] 8 S.T.C. 732 (Bom.).

—Under the Hyderabad General Sales Tax Act, 1950, it is not every sale that can be the subject-matter of the levy of sales tax. To constitute a sale within the meaning of the Act the necessary ingredients are: (1) There must be a transfer of property in goods; (2) the transfer must be in the course of trade or business; and (3) it must be for valuable consideration. The important requirement is that the sale must be in the course of trade or business and the expression "in the course of trade or business" makes it clear that the transaction must be commercial in its nature. The definition of dealer also underlines the fact that the transaction must be of a commercial nature.—*THE SECUNDERABAD CLUB v. COMMISSIONER OF SALES TAX, HYDERABAD STATE* [1957] 8 S.T.C. 850 (A.P.).

—Questions of capital assets or capital receipts do not arise in a sales tax assessment. All the sales of a dealer in the course of his business attract taxation. Whether one is a dealer in a particular commodity or not would largely depend on the volume and the regularity of one's transactions in the line.—*GOSRI DAIRY, VYTILA v. THE STATE OF KERALA* [1961] 12 S.T.C. 683 (Ker.) (F.B.).

—An activity though continuous, serious and large cannot assume the characteristics of a business unless it is an activity coming within the definition of “dealer” given in the Act. The true test is not whether the selling activity is continuous or repeated but whether the carrying on of continuous operations is with a view to earn profit.—COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE *v.* RAM DULARE BALKISHAN AND BROS. [1963] 14 S.T.C. 202 (M.P.).

—It is not any person who sells or buys that becomes a “dealer” as defined in section 2(b) of the Madras General Sales Tax Act, 1939. It is only when a person enters into in a commercial sense as in trade or business that he can properly be described as a dealer within the definition. The transactions should essentially be commercial as suggested by the words, “business of buying, selling, supplying or distributing goods”. This requisite of commercial sense of the dealings has been carried also into the concept of “sale” as defined in section 2(h), which makes it even clearer than the definition of dealer, that it is only when the sales or purchases are effected by one in the course of a trade or business that they become sales chargeable to sales tax.—D. P. ROY CHOWDHURY *v.* THE STATE OF MADRAS [1962] 13 S.T.C. 866 (Mad.).

—Under the Madras General Sales Tax Act, 1939, it is not the sale by any person that is rendered liable to tax. The sale should be by a dealer as defined in the Act, one who buys and sells goods with the object or intention of making a profit, whether the object has ultimately been achieved or not.—TRUSTEES OF THE PORT OF MADRAS *v.* THE STATE OF MADRAS [1960] 11 S.T.C. 224 (Mad.).

—A mere course of business not involving the activities of sale, supply or distribution or a mere sale, supply or distribution without a range of activities constituting a system or course would not each, taken separately, be sufficient to attract the definition of “dealer” in the Madras General Sales Tax Act, 1939. Only a systematic course of conduct on the part of any person evidencing sales, supply or distribution undertaken in a commercial spirit can lead to the conclusion that person is a dealer. The Madras General Sales Tax Act cannot be invoked against a person who is not a dealer or in the absence of the taxable event, which is a “sale or purchase” as defined under the Act.—V. K. BARASKAR *v.* THE STATE OF MADRAS [1963] 14 S.T.C. 615 (Mad.).

—Under the Bombay Sales Tax Act, 1953, in the turnover of a person carrying on the business of selling one commodity will not be included the price received by him by sale of another commodity, unless he carries on the business of selling that other commodity.—THE STATE OF GUJARAT *v.* RAIPUR MANUFACTURING CO., LTD. [1967] 19 S.T.C. 1 (S.C.).

—The fact that an assessee is a dealer in some commodities does not necessarily mean that he is a dealer in others.—SOUTHERN INDIA TEA ESTATES CO. LTD. *v.* THE STATE OF KERALA [1967] 20 S.T.C. 397 (Ker.).

—Mere buying or selling of goods otherwise than in the course of a business activity would not constitute a person a dealer within the meaning of section 2(6) of the Bombay Sales Tax Act, 1953, or section 2(11) of the Bombay Sales Tax Act, 1959.—THE STATE OF GUJARAT *v.* SHRI SURAT PANJARAPOLE [1969] 23 S.T.C. 57 (Guj.).

—*Essential ingredients to become dealer under U.P. Act.*—The essential ingredients of the definition of a “dealer” as required by the explanation under section 2(c) of the U.P. Sales Tax Act, 1948, are that the person in order to become a dealer must be (1) carrying on a business; (2) this business should be of buying and selling goods; (3) he should have the authority to buy or sell goods on behalf of his principals; and (4) he should have this authority in the customary course of business. The name by which a particular person may be called is immaterial so long as he fulfils the above requirements.—TARA CHAND KALLOO RAM *v.* SALES TAX OFFICER, HAPUR CIRCLE, MEERUT [1962] 13 S.T.C. 957 (All.).

—*Ingredients of definition under U. P. Act—When commission agents become liable to sales tax.*—All that is required for a person to come within the definition of “dealer” in section 2(c) of the U. P. Sales Tax Act, 1948 (as it originally stood), is that he must carry on the business of selling and supplying goods in Uttar Pradesh. If he is carrying on this business he is a dealer regardless of the conditions or terms on which he does the business. The words “for commission, remuneration or otherwise” are simply meant to prevent an objection that a person, though carrying on the business of selling and supplying goods in Uttar Pradesh, is not a dealer because of certain conditions or terms. The words far from excluding any person from the definition are intended to prevent any person from being excluded. The words “in Uttar Pradesh” qualify the verb “carrying on” and not the

verbs "selling" and "supplying". Therefore the business should be carried on in Uttar Pradesh and it is not necessary that the act of selling and supplying goods should be done in Uttar Pradesh. The definition does not take into consideration residence of the person carrying on the business. A person must carry on business in Uttar Pradesh in order that he becomes a dealer and it is not further necessary that he should reside in Uttar Pradesh. Similarly the definition does not take into consideration how the business is carried on, whether by own labour or through an agent or servant. If a person carries on the business through an agent or servant, he is the dealer and not the agent or servant.—*SARJU PD. PRITAM LAL v. JUDGE, REVISIONS, SALES TAX, U. P.* [1963] 14 S.T.C. 884 (All.).

Transaction not commercial in character—*Whether falls within the definition of "business"—Spinning mill running fair price shop for workmen—Liability to sales tax.*—Unless a transaction is connected with trade, that is to say, it has something to do with trade or has the incidence or elements of trade or commerce, it will not be within the definition of "business" in the Madras General Sales Tax Act, 1959, as amended by Act 15 of 1964. The words "in connection with or incidental or ancillary to" in the second part of the definition of "business" still preserve or retain the requisite that the transaction should be in the course of business understood in a commercial sense. The intention of Madras Act 15 of 1964 is not to bring into the tax net a transaction of sale or purchase which is not of a commercial character. Where the assessee, a limited liability company manufacturing cotton yarn, in order to provide amenity to its workmen, had opened a fair price shop so that commodities might be made available to the workmen at fair prices, the assessee could not be said to be carrying on the business of selling commodities in the fair price shop in a trade or commercial sense even if profit accrued to it and, therefore, it was not, with reference to the fair price shop, a dealer within the meaning of the Act. *Southern Railway Employees' Workshop Canteen v. Deputy Commercial Tax Officer, Tiruchirappalli* [1965] (16 S.T.C. 187) referred to.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE DIVISION, COIMBATORE *v. SRI THIRUMAGAL MILLS LIMITED* [1967] 20 S.T.C. 287 (Mad.).

Onus of proof—The onus of proving that an assessee is carrying on business and is, therefore, a "dealer" within the meaning of section 2(b) of the Central Sales Tax Act, 1956, is on the

department.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON *v. TRAVANCORE RUBBER AND TEA Co.* [1967] 20 S.T.C. 520 (S.C.).

Purchaser—Whether dealer.—Entry 48 in List II of the Seventh Schedule to the Government of India Act, 1935, on a proper construction, was wide enough to cover a law imposing tax on the purchaser of goods as well and the provisions in the Madras General Sales Tax Act imposing tax on the purchasers were not *ultra vires* the Provincial Legislature.—*SYED MOHAMMAD AND COMPANY v. THE STATE OF ANDHRA* [1954] 5 S.T.C. 108 (S.C.). [Entry 54 of List II in the Seventh Schedule of the Constitution of India now empowers the State Legislatures to impose a tax on the sale or purchase of goods.]

Purchaser—Whether should sell.—Under the Madras General Sales Tax Act dealings in groundnuts are taxable on the purchase price. An assessee would therefore be liable to pay tax if the groundnut was purchased by him in the course of his business. For the purpose of tax liability it does not matter when exactly he sold the groundnut or when he converted that groundnut into oil.—*SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS* [1954] 5 S.T.C. 357 (Mad.).

—In order to impose tax at the purchase point, it is not necessary for the department to await the sale of the very goods purchased by the dealer. There is no provision of law either in the Act or the Rules which impose such an obligation on the department.—*BERAR OIL INDUSTRIES AND ANOTHER v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR* [1959] 10 S.T.C. 199 (A.P.).

—See also cases digested under sub-heading "Purchasing goods for consumption in business" *infra*.

Person who only sells goods—Whether dealer.—In the Madras General Sales Tax Act, 1939, the word "dealer" is defined as meaning "any person who carries on business of buying or selling goods". The word used is "or" and not "and" and therefore a person will be a dealer within the meaning of the Act who keeps on selling goods even though he does not buy any.—*K. T. PAPPANNA ROWTHER, In re* [1953] 4 S.T.C. 292 (Mad.).

Supplier of goods—Whether dealer.—Supply is merely a form of sale and there can therefore be no supply of goods unless there is a sale. A person who merely supplies goods without selling them

cannot therefore be a dealer.—*STATE OF BIHAR v. THE BENGAL CHEMICAL AND PHARMACEUTICAL WORKS LTD.* [1954] 5 S.T.C. 28 (Pat.).

—There does not seem to be any special significance for the word “supplies”. If the supply of goods is for no consideration, then it cannot come within the sales tax levy, as there is no element of sale. The transaction is essentially a gift. If the supply of goods is for consideration, then there can be no doubt that it is a sale. Hence the word “supplies” does not enlarge the scope of the definition.—*INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 47 (Mad.).

—Sales tax is to be levied on the gross turnover on sales which have taken place both inside and outside Bihar. A person may be a dealer and still he may not be liable to sales tax if the transactions done by him were not sales. In order to constitute sale, there must be a transfer of property in goods. Sale in the Bihar Sales Tax Act, 1947, is not used in the popular sense but is used as meaning transfer of property in goods. The word “supply” in the definition of dealer in section 2(c) cannot be interpreted in its literal absolute sense; but must be given a limited and qualified sense. It should be interpreted in association with the word “sale”. “Supply” is merely a form of sale and despatch, and there can be no supply of goods in this sense unless there is sale. *State of Bihar v. The Bengal Chemical and Pharmaceutical Works Ltd.* [1954] (5 S.T.C. 28) followed.—*KARAMCHAND THAPAR AND BROTHERS v. THE STATE OF BIHAR* [1956] 7 S.T.C. 58 (Pat.).

—The word “supply” which occurs in the definition of casual trader and dealer in section 2(c) and (e) of the Hyderabad General Sales Tax Act, 1950, cannot be interpreted in its literal absolute sense, but must be given the qualified meaning which it deserves in the context according to the well known rule of interpretation *noscitur sociis*.—*JUBILEE ENGINEERING CO., LTD. v. SALES TAX OFFICER, HYDERABAD CITY AND OTHERS* [1956] 7 S.T.C. 423 (Hyd.).

Ownership in goods—Whether necessary.—In order to constitute a person a dealer ownership in the goods is not essential. Dominion over and possession of the goods is adequate.—*RAMACHANDRA RAMPAL v. THE STATE* [1952] 3 S.T.C. 109 at p. 111.

—Neither the definition of “dealer” nor of “sale” contemplates as a necessary condition that the goods sold should belong to the person

selling or buying. There can be a sale or purchase on behalf of another.—*RADHAKRISHNA RAO v. PROVINCE OF MADRAS* [1952] 3 S.T.C. 121 (Mad.).

Dominion over and possession of goods sufficient—Commission agent.—A commission agent who has dominion over and possession of the goods and who is empowered to effect sales is a dealer. *RAJAMANNAR, C.J.*, observed as follows:—“In the case of a commission agent, the accepted mercantile practice is that he has control over or possession of the goods and he has the authority from the owner of the goods to pass the property in and title to the goods. If this is so, undoubtedly when a commission agent sells goods belonging to his principal with his authority and consent and without disclosing to the buyer the name of the owner, there is certainly a transfer of property in the goods from the commission agent to the buyer. A business which consists in such transactions can properly be described as a business of selling goods. A similar position would arise even in the case of a commission agent buying for an undisclosed principal. A commission agent doing this kind of business would, in my opinion, fall within the definition of dealer in the Sales Tax Act.”—*RADHAKRISHNA RAO v. THE PROVINCE OF MADRAS* [1952] 3 S.T.C. 121 (Mad.).

—See also *COMMISSION AGENT*, page 269 *supra*.

Person selling through employee, commission agent or other means—Whether dealer.—A person may directly sell himself or through an employee or through a commission agent. The fact that he sells the goods only through a commission agent is no excuse for not sending the return. He is bound to send the return though perhaps it may be open to him to state that it is a “nil return” by reason of the fact that all the items figure in the return of the commission agent. The duty to send the return whether it is nil or not exists and failure to comply therewith will entail a prosecution for contravention of section 15(a).—*K. T. PAPPANNA ROWTHER, In re* [1953] 4 S.T.C. 292 (Mad.).

—A person whether he himself sells direct or through an employee or through a commission agent or through other means will come within the definition of a dealer in the Mysore Sales Tax Act, 1948, irrespective of the nature of the machinery he employs to sell the goods.—*STATE OF MYSORE v. A. C. HANUMANTHAPPA* [1955] 6 S.T.C. 34 (Mys.).

—The expression “dealer” in section 2(c) of the Orissa Sales Tax Act, 1947, will not include a manager or an ordinary agent of a dealer if

the dealer himself resides in Orissa. Thus, those classes of agents whose duties are akin to those of mere employees carrying on the principal's business of selling goods will not come within the definition of the expression "dealer".—*COMMISSIONER OF SALES TAX v. K. C. MOHAPATRA* [1962] 13 S.T.C. 412 (Orissa).

—*Petitioner selling at railway station platform on commission basis edibles and beverages prepared by railway administration.*—Under an agreement entered into with the railway administration, the petitioner undertook to vend on a railway station platform and along the train side, food packets, refreshments and beverages prepared by the administration at the vegetarian refreshment room. The agreement provided, *inter alia*, that the petitioner should employ, for the vending, his own servants possessing specified attributes, that he should sell the edibles at the prices fixed by the administration and should be paid at the end of each day twelve naye paise per rupee on the value of edibles or beverages supplied to him and that he should remit "the entire sale proceeds of the articles supplied during the day intact to the vegetarian refreshment room manager." Under the agreement the petitioner was bound to obey such instructions as the railway officials might give in the day to day performance of the agreement and power was given to the railway administration to punish the petitioner for misconduct by imposing a fine. The department and the Tribunal held that the agreement envisaged a sale by the administration to the petitioner and a second sale by him to the passengers of the railway and therefore the petitioner was liable to be assessed to tax: *Held*, (1) that as the terms of the contract between the parties had been reduced to writing, they alone must ordinarily be considered to ascertain the nature of the transaction evidenced by it and it was not open to the Tribunal to go behind the terms and ascertain what was obtaining in practice; (2) that the petitioner was neither a dealer nor an agent but was nothing more than a servant. The sale of food-stuffs to the passengers must be regarded as one directly made by the railway administration through its servant, the petitioner, and therefore the petitioner was not liable to be assessed to sales tax on the turnover.—*S. KRISHNAMACHARI v. THE STATE OF MADRAS* [1964] 15 S.T.C. 445 (Mad.).

Servant working under control of master—Whether dealer.—Under section 6 of the United Provinces Sales of Motor Spirit Taxation Act (1 of 1939) the person liable to punishment for contravention of the prohibition to carry on business without a registration certificate is the

person who carries on the business as a retail dealer. A servant, who is working under the control of his master, cannot be said to carry on business as a retail dealer and he cannot therefore be prosecuted for contravention of the provisions of section 6.—*ABDUL SAMAD KHAN v. REX* [1948] 1 S.T.C. 175 (All.).

Person carrying on another's business as agent.—A person who carries on another person's business as his agent must be distinguished from a person who, in the course of his own business, sells, *i.e.*, whose business is to sell, as an agent, goods belonging to another person. In the former case it is the principal who is carrying on the business and not the agent and, therefore, the principal is a dealer (if the explanation to the definition did not exist). In the latter case the agent carries on his own business, and, therefore, is a dealer and his principal may be another dealer. The effect of the explanation is that a person carrying on the business of a non-resident person as his agent is to be treated as a dealer instead of the latter and not that both are to be dealers. The Legislature clearly intends only one person to be a dealer in respect of one business. If a person carries on the business (of buying or selling and supplying goods) of two principals as an agent of each, and one of them resides outside Uttar Pradesh and the other in Uttar Pradesh, he is a dealer in respect of the business of the former principal and the latter principal will himself be taken to be a dealer. While section 6 might cover the case of a person who buys goods from the principal and sells them on an agreed commission or brokerage, the person who is covered by the section is one who without buying them sells them as goods of the principal. He is a dealer and, therefore, liable to be taxed under section 3, and section 6 was enacted to exempt him because the principal would be assessed on the same sales. The section makes it clear that a person who sells another's goods as an agent is a dealer liable to be taxed under section 3 and that it is wrong to say that a person is not a dealer unless he sells his own goods. When an agent buys goods from his principal and, instead of selling them at the same price and charging commission, sells them at a different price, he is to be treated as a dealer and is not to be exempted. The Legislature has distinguished from a dealer, who as an agent sells goods for an agreed commission, a dealer who as an agent sells his own goods at his own price; the latter is not to be exempted whereas the former may be. A person, who in the course of his own business sells goods belonging to two or more principals, is also a

dealer. Weighing dues charged separately from buyers in addition to the price of the goods sold and appropriated by an agent are not for services rendered by him as weighman but are part of the proceeds of sale. If the services are in respect of the goods and incidental to their being sold, the dues charged for them are to be included in the sale proceeds.—*SARJU PD. PRITAM LAL v. JUDGE, REVISIONS, SALES TAX, U.P.* [1963] 14 S.T.C. 884 (All.).

Profit or loss not material—In order to decide whether a person is a dealer and is therefore liable to sales tax it is quite immaterial whether he has made a profit or loss. Whether there was a profit or loss is of no account as sales tax is not a tax on income.—*MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM* [1953] 4 S.T.C. 129 (Assam).

—The question whether a dealer has made a profit in respect of a sale is irrelevant for the purposes of sales tax. If a man is a “dealer” in “goods” he will be liable to pay sales tax on his “turnover” even if he has suffered a loss.—*VARASUKI AND Co. v. THE PROVINCE OF MADRAS* [1951] 2 S.T.C. 1 (Mad.).

—In order to become a dealer, the test is not whether the assessee gets profit or loss but it is the object with which he carries on his trading activity.—*NIZAM SUGAR FACTORY LTD. v. COMMISSIONER OF SALES TAX, HYDERABAD* [1957] 8 S.T.C. 61 (Hyd.).

—See also the cases cited below.

Motive to make profit, whether necessary—The Madras General Sales Tax Act, 1939, is not a statute, which attempts to impose a tax on the mere sale or purchase of goods. Besides the definition of dealer in which reference is made to the person, who carries on the business of buying or selling goods, the definition of sale also implies that the transfer of property in the goods by one person to another should be in the course of trade or business. The word “business” employed in the definition of “dealer” is used in the sense of buying or selling goods with a view to earn profit. The assessee carrying on business as engineers and contractors supplied food-grains for the benefit of their workmen and recovered the cost of the food-grains by debiting the value against the wages of the workmen: *Held*, that as the supply of food-grains was not carried out with a view to earn profit and in fact no profit accrued, the assessee was not liable to sales tax on the value of food-grains.—*GANNON DUNKERLEY & Co. (MADRAS) LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 216 (Mad.).

—The word “business” in the definition of “dealer” in the Madras General Sales Tax Act, 1939, is used in the commercial sense, an integral part of which is the motive to make profits by sales or purchases, and if this is wanting, a person buying or selling would not be a “dealer”. Under section 46 of the Factories Act the assessee was under a duty to maintain canteens for the benefit of their employees. The prices for the food-stuffs sold in the canteens were fixed by the managing committee constituted under the Madras Factories Rules and the sales of food and refreshments in the canteens were to be on non-profit basis: *Held*, that the assessee was not a dealer and the turnovers relating to sales effected in the canteens were not liable to be taxed under the Madras General Sales Tax Act. *Gannon Dunkerley and Co. (Madras) Ltd. v. The State of Madras* [1954] 5 S.T.C. 216 followed.—*SREE MEENAKSHI MILLS LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 291 (Mad.).

—The word “business” in the definition of “dealer” is used in the commercial sense, an integral part of which is the motive to make profit by sales or purchases, but the profit need not necessarily accrue to the dealer who carries on the business of buying or selling goods as in the case of commission agents. The Indian Coffee Board, when it sells the coffee of the pool, does aim to make a profit though not for itself. The Board is therefore a dealer.—*THE INDIAN COFFEE BOARD, BATLAGUNDU v. THE STATE OF MADRAS* [1954] 5 S.T.C. 292 (Mad.).

—To constitute a sale within the meaning of the Madras General Sales Tax Act, 1939, at least three ingredients are required:—(i) There must be a transfer of property in goods. (ii) The transfer must be in the course of trade or business. (iii) And it must be for valuable consideration. In the absence of any one of these ingredients the transaction will not be a sale within the meaning of the Act. The expression “in the course of trade or business” which is incorporated in the definition of “sale” makes it plain that the transaction must be commercial in its nature, that is to say, the transaction must have its inception in a hope of profit, i.e., with a profit motive. It is not necessary that any profit should actually be realised and the transaction may well end in a loss. None the less the transaction would be a sale provided it was put through as a part of or in pursuance of an enterprise which was set on foot in the hope of gain. The entire connotation of the word “sale” is carried into the definition of “dealer” in the Act. In the absence of profit motive the supply of

refreshments by a club to its members would not be a sale as that word is defined in the Act.—DEPUTY COMMERCIAL TAX OFFICER, TRIPPLICANE DIVISION, AND ANOTHER *v.* THE COSMOPOLITAN CLUB [1955] 6 S.T.C. 1 (Mad.).

—The dealer or a trader who is engaged in the business of buying and selling or supplying goods must be engaged in a continuous or periodical activities in the year of assessment with a view to earn profit, for in a transaction of sale there is in contemplation of the making of profit.—JUBILEE ENGINEERING CO. LTD. *v.* SALES TAX OFFICER, HYDERABAD CITY, AND OTHERS [1956] 7 S.T.C. 423 (Hyd.).

—The Mysore Sales Tax Act, 1948, does not seek to levy sales tax on all sale transactions but only on such transactions as are effected in the course of business. Where the assessee-mill maintained a canteen on a “no profit, no loss” basis for the benefit of their employees in conformity with the requirements of the Factories Act: *Held*, that the turnover relating to sales effected in the canteens was not liable to be taxed under the Act. *Gannon Dunkerley and Co. (Madras) Ltd. v. State of Madras* [1954] (5 S.T.C. 216; A.I.R. 1954 Mad. 1130), *Deputy Commercial Tax Officer, Triplicane Division v. The Cosmopolitan Club* [1955] (6 S.T.C. 1; A.I.R. 1954 Mad. 1144) and *Sree Meenakshi Mills Ltd. v. State of Madras* [1954] (5 S.T.C. 291; A.I.R. 1954 Mad. 1143) relied on.—DAVANAGERE COTTON MILLS LTD. *v.* STATE OF MYSORE, AND ANOTHER [1957] 8 S.T.C. 793 (Mys.).

—[In the appeal preferred by the State of Madras in *Gannon Dunkerley's* case, the question whether the profit making motive was essential or not was not considered. The point was not pressed and therefore the Supreme Court did not decide it. See also the decision of the Supreme Court in *THE STATE OF ANDHRA PRADESH v. H. ABDUL BAKSHI AND BROS.* [1964] 15 S.T.C. 644 (S.C.) and other subsequent decisions.]

—The definition of “business” in section 2(d) of the Madras General Sales Tax Act, 1959, which is an inclusive one, does not dispense with the requirement, in order to constitute an activity a business for purposes of the Act, that it should be carried on with a motive to make profit. The effect of this definition is only that actual accrual of profit is not required to constitute an activity a business. Therefore it has brought about no change to the exposition of the legal position in the cases of *Gannon Dunkerley and Co. v. State of Madras* [1954]

(5 S.T.C. 216; I.L.R. 1955 Mad. 832) and *Sree Meenakshi Mills Ltd. v. State of Madras* [1954] (5 S.T.C. 291; (1955) 1 M.L.J. 104). The petitioner was a firm of planters. As it was difficult for the labourers working in the estates to get their own food-grains and grocery, the petitioner used to buy them and supply the same to the labourers as a matter of convenience and amenity to them without any motive of profit, and adjust the sale price against the wages to be paid to the labourers: On the question whether the petitioner was liable to sales tax on the transactions of supply of food-grains and grocery to the labourers. *Held*, that the transactions were not in the course of any business and were therefore not liable to sales tax under the Madras General Sales Tax Act, 1959. *Chairman, Committee of Management, Integral Coach Factory Canteen, Madras v. Deputy Commercial Tax Officer, Perambur Division* [1962] (13 S.T.C. 827) followed.—W.P.A. SOUNDARAPANDIAN AND BROTHERS *v.* THE DEPUTY COMMERCIAL TAX OFFICER, NILAKOTTAI, MADURAI, AND ANOTHER [1962] 13 S.T.C. 870 (Mad.).

—A business which has no profit-motive as its basis cannot be regarded as a business for the purpose of the Madras General Sales Tax Act, 1959, and a person who carries on such an activity cannot be regarded as a “dealer” carrying on business.—THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, MADRAS-7 *v.* CARRIAGE WORKS CANTEEN, SOUTHERN RAILWAY, PERAMBUR [1963] 14 S.T.C. 654 (Mad.).

—Though under section 2(d) actual of profit from trade or commerce is not essential, it does not eliminate the requisite of a profit motive to call an activity a “business” for the purpose of the Madras General Sales Tax Act, 1959. Even in the 1939 Act, in order to constitute a person a dealer it was not necessary that he should run a business making profit and it would be sufficient if the business was run with a profit motive. That still continues to be the position even under the 1959 Act.—CHAIRMAN, COMMITTEE OF MANAGEMENT, INTEGRAL COACH FACTORY CANTEEN, MADRAS *v.* DEPUTY COMMERCIAL TAX OFFICER, PERAMBUR DIVISION [1962] 13 S.T.C. 827 (Mad.).

—It is not necessary to discern the profit motive in respect of each and every part of the business carried on by a dealer; the profit motive necessary to be examined is one which embraces the whole business of the dealer and not in respect of each one of the component parts of the business.—GANNON DUNKERLEY AND COMPANY

(MADRAS) PRIVATE LTD. v. THE GOVERNMENT OF MADRAS [1964] 15 S.T.C. 40 (Mad.).

—*Definition of business excluding profit motive—Validity—Power of State Legislature to enact such definition—Whether section 9, Amending Act 15 of 1964, validated levy of sales tax on canteens run on non-profit basis under Factories Act, 1948.*—The power of the State to tax sales of goods is not restricted to sales which are in the course of trade or business with a profit motive. That power will include the power to tax sales of goods of all description so long as they satisfy the definition of "sale" in the Sale of Goods Act, 1930. Therefore there is nothing illegal or *ultra vires* the State Legislature in excluding the profit motive when it amended the definition of "business" in the Madras General Sales Tax Act, 1959, by the amending Act 15 of 1964. Section 9 of the amending Act 15 of 1964 has validated the levy of tax on the sales effected in 1959-60 in the canteen run by the Southern Railway Workshop for its workers on a non-profit basis under the provisions of the Factories Act, 1948. The expression "trade or commerce" need not necessarily connote a profit motive, though ordinarily such a motive will exist when a trade is practised as a means of livelihood or gain.—SOUTHERN RAILWAY EMPLOYEES' WORKSHOP CANTEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUCHIRAPALLI TOWN IV, AND ANOTHER [1965] 16 S.T.C. 187 (Mad.).

—*Southern Railway—Sale of food-stuffs and refreshments—Absence of profit motive—Whether a sale in the course of business—Whether section 9, Madras General Sales Tax (Second Amendment) Act (15 of 1964), validated the levy.*—Although the main business activity of the Southern Railway was the activity of transport of passengers, the activity of the Railway in undertaking catering for its passengers on a large and systematic scale must be considered an activity in the nature of a business though it did not have a profit motive. Therefore, even though for the years 1959-60, 1960-61 and 1961-62, the Railway could not be assessed to sales tax under the Madras General Sales Tax Act, 1959, on its turnover of sales of food-stuffs and refreshments due to the absence of the profit motive, section 9 of the Madras General Sales Tax (Second Amendment) Act (15 of 1964) validated the levy.—UNION OF INDIA BY THE GENERAL MANAGER, SOUTHERN RAILWAY, MADRAS v. THE STATE OF MADRAS [1967] 20 S.T.C. 107 (Mad.).

—*Co-operative canteen for railway servants—Supply of food and refreshments on no profit and no loss basis—Liability to sales tax.*—An activity is a

business within the meaning of the Mysore Sales Tax Act, 1957, only when it is carried on for the acquisition of gain. Although an activity may involve the occupation of time, attention and labour and may also involve the person carrying on that activity in a liability to other persons, so long as the purpose of that activity is not to make a profit or gain out of it, it would not be a business as ordinarily understood. The Southern Railway Co-operative Canteen Ltd. registered under the Mysore Co-operative Societies Act, 1948, and having as its principal purpose supply of food and refreshments to the members of the railway staff is an ameliorative endeavour in the nature of a labour welfare scheme without a motive for the acquisition of profit or gain. The society is therefore not liable to sales tax under the Mysore Sales Tax Act, 1957, on its supply of food and refreshments for the period prior to the amendment of the Act by the Mysore Sales Tax (Amendment) Act (9 of 1964).—THE SOUTHERN RAILWAY CO-OPERATIVE CANTEEN LTD. v. COMMERCIAL TAX OFFICER, II CIRCLE, MYSORE CITY [1967] 20 S.T.C. 96 (Mys.).

—See also the cases digested below :—

—*"Carrying on business", meaning of—Person must carry on business—Zamindar selling by auction standing timber in zamindari grown spontaneously.*—The expression "carrying on business" in section 2(3) of the Assam Sales Tax Act, 1947, connotes a continuous trade or occupation involving time and labour as also some investments, which may be regarded as an independent trade or occupation by itself capable of being sold or transferred as such. The assessee, a zamindar, used to sell by auction the standing sal trees grown spontaneously in his zamindari. The purchasers were permitted to fell the trees and sell them after sawing and other processes. The question was whether the assessee was a dealer and was therefore liable to sales tax: *Held*, that although the assessee was disposing of the trees year after year, the transaction lacked the essential attributes of carrying on a business as such. There was neither any element of purchase nor any element of manufacture involved in the process nor the business was an independent business as such. The assessee was therefore not a dealer within the meaning of the Act and was therefore not liable to sales tax.—RAJA BHAIRABENDRA NARAYAN BHUP v. SUPERINTENDENT OF TAXES, DHUBRI, AND OTHERS [1958] 9 S.T.C. 60 (Assam).

—*Person must carry on business.*—The Ahmedabad Education Society had as its objects the spread of education, the making of education accessible to all sections of the people, starting

and taking over Arts Colleges, and other similar objects, and in furtherance of these objects the society wanted to put up buildings for colleges and residential quarters for the staff and hostels for students. They gave a contract for the construction of these buildings to a contractor. The society then realised that it would be cheaper and more economical to have a brick factory of their own for the purpose of preparing bricks which could be used for the construction of the buildings and therefore they set up a brick factory in 1946 and also for a similar purpose they set up lime kilns in 1948. They found that the price of bricks was Rs. 48 per thousand in the market and by reason of setting up this brick factory and lime kilns the cost of bricks to them was only Rs. 38 per thousand. They supplied these bricks to their contractor. They manufactured more bricks than were actually necessary for their own construction work and there was a surplus, and it was found as a fact that there was a danger of these bricks deteriorating and therefore they had to be disposed of, and they were disposed of from time to time either to sister educational institutions and in some cases also to individuals. But they were disposed of at cost price and no profit whatever was made by the society. The society also obtained a permit from Government to import steel, again for the purpose of their buildings, and after the steel had arrived the Government gave them a permit to buy steel locally, with the result that the society did not require the steel which had been imported and the Controller of Steel directed them to sell the steel which they had imported to other persons requiring steel. This particular activity also did not result in any profit to the society. The society in view of the fact that it was asked to submit accounts under section 15 of the Sales Tax Act, made an application under section 19 for the determination of the question as to whether the society was a dealer. The Assistant Collector held that the society was a dealer, and that decision was confirmed in appeal by the Collector of Sales Tax, but in revision the Sales Tax Tribunal came to the contrary conclusion. On a reference to the High Court under section 23 of the Bombay Sales Tax Act at the instance of the State of Bombay: *Held*, that as there was no intention on the part of the society to sell the goods at the time when the bricks were manufactured or the steel was imported, the society was not carrying on the business of selling or supplying goods and therefore the society did not come within the ambit of the definition of "dealer" in section 2(c). —THE STATE OF BOMBAY v. THE AHMEDABAD EDUCATION SOCIETY [1956] 7 S.T.C. 497 (Bom.).

—*Carrying on business.*—On the scope of the definition of dealer CHAGLA, C.J., in delivering the judgment in the above-said case observed as follows:—"It is clear from the definition of a dealer that it is not merely the act of selling as defined in the Act which constitutes a person a dealer. The activity which the person must indulge in is not merely the activity of selling in the sense of transferring property in goods, but it must be the activity of carrying on the business of selling or supplying goods. What the Legislature has emphasised is not the act or activity of selling but the act or activity of carrying on the business. Every taxing statute must be construed strictly in favour of the subject and it is necessary that the Court must look at the provisions of a taxing statute in order to determine upon whom and under what circumstances the incidence of tax should fall, and when we look at the various provisions of the Sales Tax Act it is clear that substantially and broadly speaking the Legislature wanted to tax business people who did the business of selling various commodities which were made liable to tax. For instance, section 8 prevents a person from carrying on business, who would be a dealer within the meaning of the definitions unless he got himself registered as such, and the consequence of a dealer carrying on business without registration is serious because he renders himself liable to penal consequence as provided in section 24. Therefore, the expression 'carrying on business' must be given a restricted meaning In our opinion, if we construe the expression 'carrying on the business of selling or supplying goods', in a commercial sense, then it is clear that the object of the person who carried on that business must be to sell or to supply. A person may either produce goods or purchase goods with the object ultimately of selling them. Unless that object is present and unless that intention is clear, the mere activity of selling or supplying would not constitute the carrying on of business of selling or supplying. If the Advocate-General's contention were to be accepted any continuous activity or any repeated activity seriously undertaken which results in the supply or sale of goods would attract the sales tax. But what the Advocate-General overlooks in putting forward that contention is that the activity, although it may be serious, although it may be continuous, unless it assumes the characteristics of a business, is not an activity which can come within the ambit of section 2(c). If the intention of the Legislature was simply to tax every sale and every supply, then it was unnecessary to state that the person must carry on the business of selling or supplying

goods. A further indication is given as to the nature of the activity by the Legislature including in this definition society, club or association which sells or supplies goods to its members. The Legislature realised that a club or society does not carry on the business of supplying goods to its members, its business is to give amenities, to provide a place where people can spend their leisure hours, and realising that the society, club or association would not come within the definitions, the Legislature had to extend the definition of a dealer and include in that definition a society, club or association."

—*Profit motive.*—On the question whether the profit motive is essential in order to make a person a dealer CHAGLA, C.J., said as follows:—"An interesting question was considered by the Tribunal and was also debated here as to whether a profit making motive is an essential ingredient in order that an activity should constitute a business. The Tribunal has taken the view following certain English and Indian decisions that in the absence of a profit motive an activity cannot be looked upon as a business. The question is a very important and a difficult one, but in our opinion on the facts of the present case we can come to a conclusion in favour of the society without deciding that the absence of the profit motive alone does not constitute its activity a business. As we said before, there is a clear finding here that there was a complete absence of the profit motive in the activity carried on by the society. But that is not the only circumstance which has led us to the conclusion to which we have arrived. As we have already pointed out the reason for our decision is not the absence of the profit motive but the absence of any intention on the part of the society to sell the goods at the time when the bricks were manufactured or the steel was imported. The question which the Tribunal has considered with regard to the profit motive would only fall to be determined when we have a case where the assessee either buys or manufactures goods with the intention of selling them and sells them without making profit. Then it will be time to consider whether such an activity would constitute business within the meaning of the Sales Tax Act."

—On the question of profit motive see also the decisions of the Supreme Court in 15 S.T.C. 644; 19 S.T.C. 1; 20 S.T.C. 398 and 21 S.T.C. 317.

—A person does not necessarily fall within the definition of a "dealer" in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, merely because he sells or supplies commodities. In order to bring him within the definition it is

additionally necessary to show that he carries on those activities as his business.—GIRDHARILAL JIWANLAL *v.* ASSISTANT COMMISSIONER OF SALES TAX (APPEALS), NAGPUR [1957] 8 S.T.C. 732 (Bom.).

—*Carrying on business.*—In order to constitute a person a dealer within the meaning of section 2(g) of the Madras General Sales Tax Act, 1959, he must carry on the business of buying and selling goods, and the sales for the purposes of the Act must be sales effected in the course of business. "Business" for the purpose of section 2(g) and section 2(n) should be understood in a commercial sense with a view to make profit. If those elements are absent, the definition of "dealer" and "sale" in the Act will not be satisfied. Where therefore a person is statutorily obliged to run a canteen for the benefit of his workmen on an entirely non-profit basis he is not a dealer and the sales effected by him to his workmen pursuant to his statutory obligation are not sales under section 2(n). *Sree Meenakshi Mills Ltd. v. State of Madras* [1954] (5 S.T.C. 291) and *Trustees of the Port of Madras v. State of Madras* [1960] (11 S.T.C. 224; (1960) 2 M.L.J. 86) relied on. *Madras Electricity Department Canteen v. State of Madras* [1962] (13 S.T.C. 288; 75 L.W. 189) distinguished.—CHAIRMAN, COMMITTEE OF MANAGEMENT, INTEGRAL COACH FACTORY CANTEEN, MADRAS *v.* DEPUTY COMMERCIAL TAX OFFICER, PERAMBUR DIVISION [1962] 13 S.T.C. 827 (Mad.).

—*Carrying on business—What constitutes—Supply of parcel vans in Uttar Pradesh to railways under single contract.*—The definition of the term "business" under the U.P. Sales Tax Act, 1948, is somewhat different from that under the Indian Income-tax Act, 1922, where it includes an adventure in the nature of trade. To constitute business under the U.P. Sales Tax Act there must be a repetition or continuity of acts of buying and selling in Uttar Pradesh. The mere selling of goods in Uttar Pradesh is not taxable unless it is in the course of carrying on a business in Uttar Pradesh. The purchase and sale of a single article or a number of articles on a single contract may not amount to business, as the essence of business is the repetition of acts. The assessee carrying on in Calcutta the business of structural engineers, ship, wagon and coach builders entered into a single contract for the supply of 36 parcel vans for about Rs. 4 lakhs to the North Eastern Railway. The assessee had no branch or place of business in the State of Uttar Pradesh, but the railway authorities gave them facilities for assembling the wagons in their workshop at Izatnagar. The question was

whether the assessee could be said to be carrying on the business of selling railway vans in Uttar Pradesh as the vans were supplied at Gorakhpur: *Held*, that the assessee was not carrying on a business of selling railway vans in the State of Uttar Pradesh. *Senaji Kapur Chand v. Devi Chand* [1930] (A.I.R. 1930 P.C. 300) referred to.—COMMISSIONER OF SALES TAX, U.P. *v. D. C. DHIMAN & BROTHERS* [1963] 14 S.T.C. 473 (All.).

—*Carries on business—Kanpur Development Board—Whether dealer.*—The expression “carries on business” in the definition of dealer in section 2(c) of the U.P. Sales Tax Act, 1948, means carries on a continuous activity in order to earn a livelihood or to make a profit and does not mean simply remaining occupied with something. The word “otherwise” in the expression “commission, remuneration or otherwise” does not convey the idea that the definition includes a person carrying on business without any intention of making a profit. The word “otherwise” means “other than for commission or remuneration”. If a business is carried on for profit it cannot be said to be carried on for commission or remuneration and must be held to be carried on for something other than commission or remuneration. Commission and remuneration do not include profit and, therefore, “otherwise” covers profit. The assessee, the Kanpur Development Board, was constituted for certain specific purposes such as provision of water supply, development and maintenance of streets, regulation of traffic, town planning, adequate housing and location of markets. The assessee had to make constructions to carry out these objects and it entrusted the work to the contractors. In order to avoid delay and to secure the use of satisfactory materials in all constructions, the assessee arranged to supply the contractors with certain materials required by them in the constructions from its own stores on certain prices. Under the terms of the contract all the materials supplied to the contractors became their property and the contractors had to pay their price through adjustment of their claims under the contracts. The assessee had the right to repurchase unused materials at the prevailing market price, but it had no intention to make a profit out of the sale of the materials to the contractors. The question was whether the assessee was a dealer within the meaning of section 2(c) of the U.P. Sales Tax Act, 1948, and was liable to sales tax on the supplies made to the contractors: *Held*, that the assessee was an association of persons and it sold goods to the contractors,

but it did not sell goods as a dealer and therefore it was not liable to pay sales tax on the turnover of the sales made to the contractors. The argument based on unconstitutionality of a provision under Article 14 of the Constitution is not open to the Commissioner of Sales Tax who wants to enforce the provision; it is open only to one who would be aggrieved by the enforcement of it. If the correct interpretation of a provision would render it unconstitutional the Court will have to strike it down and cannot give a forced interpretation with a view to save it.—KANPUR DEVELOPMENT BOARD *v.* COMMISSIONER OF SALES TAX, U.P. [1963] 14 S.T.C. 493 (All.).

—The concept of “carrying on business” in the U.P. Sales Tax Act, 1948, has been fundamentally changed and the decision of the High Court in *Kanpur Development Board v. Commissioner of Sales Tax* [1963] (14 S.T.C. 493) has been set at naught by section 2(aa) of the U.P. Sales Tax Act, 1948, introduced in the Act by the U.P. Taxation Laws Amendment Act, 1963. Therefore a company running a canteen for its workers on a non-profit basis under the provisions of the Factories Act carries on the business of selling goods at the canteen and is liable to sales tax under the U.P. Sales Tax Act, 1948. The Aligarh Muslim University, which maintains dining-halls wherein it serves food and refreshments to its resident students, is not liable to sales tax on the fees charged by it from students for covering the expenditure over dining-halls. It is also not a “dealer” within the meaning of section 2(c).—SWADESHI COTTON MILLS COMPANY LIMITED *v.* SALES TAX OFFICER, SPECIAL INVESTIGATION BRANCH, KANPUR, AND ANOTHER [1964] 15 S.T.C. 505 (All.).

—“Carries on business”, meaning of—*Liability to tax—Tests stated.*—The C.P. and Berar Sales Tax Act, 1947, does not impose tax on the mere sale or purchase of the goods specified in the Schedules. What is taxable under the Act is the sale of those goods which are effected by a dealer; but every seller of commodity is not a dealer. In order to constitute a person a dealer he must be engaged, whether as principal or agent, in the business of selling or supplying goods. For the imposition of tax under the Act on the sale transaction of a commodity, it is not sufficient that the sale is by a dealer carrying on the business of selling or supplying some commodity. The business of the dealer must be of selling or supplying the particular commodity sought to be taxed. Otherwise he cannot be regarded as a dealer in relation to that commodity,

and if he is not so regarded, he is not liable to be taxed under the Act for any sale of the commodity effected by him. Merely because an activity is continuous or repeated it does not follow that it is a business activity as understood in a commercial sense. The expression "carries on the business of selling or supplying goods" in the definition of "dealer" must be construed in its commercial sense. So construed, it means the carrying on of continuous trading operations with a view to earn profit. A person engaged in continuous trading operations may not actually obtain profit and may incur a loss. But if he engages himself in those operations with the object of earning profit, then he is carrying on a business. The test is the object with which the activity is carried on, and not whether he actually gets profit or loss, which is material. The assessee-company, carrying on the business of manufacturing textiles, supplied steel and cement on several occasions to their contractors, who were constructing buildings for the assessee, and debited the price of the materials to the contractors' account. On the question whether the assessee could be charged to sales tax on the price of the materials supplied to the contractors: *Held*, that the assessee was not a dealer carrying on the business of selling or supplying steel and cement and it was therefore not liable to sales tax.—*STATE OF M.P. v. BENGAL NAGPUR COTTON MILLS LTD.* [1961] 12 S.T.C. 333 (M.P.).

—*Carrying on business—Assessee having office outside State sending goods by rail and endorsing railway receipts in favour of bankers in Uttar Pradesh—Whether assessee carries on business in Uttar Pradesh.*—The assessee was a dealer in condensed milk and powdered milk sold in sealed containers with its office in Calcutta. It had no office in Uttar Pradesh. It entered into contracts of sale with customers residing in Uttar Pradesh and sent the goods by rail to Uttar Pradesh. The railway receipts were prepared in the name of the assessee both as consignor and consignee. The assessee sent the railway receipts to its bankers in Uttar Pradesh after endorsing them in their favour. The bankers delivered the railway receipts to the customers after receiving payment from them and endorsing the railway receipts in their favour. In some cases the goods were taken delivery of by the assessee's representatives in Uttar Pradesh who then sold them by going from door to door: *Held*, that the assessee was a dealer as some of the activity which constituted the business was done by the assessee in Uttar Pradesh and it could be said to carry on

the business in Uttar Pradesh.—*NESTLE'S PRODUCTS (INDIA) LTD. v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 606 (All.).

—*Dealer carrying on business of selling separated parts of ship machinery—Purchase of ship from Indian company and sale to foreign company—Liability of dealer to sales tax.*—When the provisions of section 5 of the Bombay Sales Tax Act, 1953, are read together with the definitions of "turnover", "dealer" and "sale" in the Act, the position that emerges is that the person who carries on the business of selling goods is liable to pay sales tax on the aggregate of amounts of sale price received or receivable by him in his capacity as a person carrying on business minus the deductions allowable therefrom under sections 7 and 8. In other words, the sale price of such goods only as are sold by him in the course of his business can be included in the turnover of his business, and not the sale price of any kind of goods sold by him. The test then is to ascertain whether in the circumstances and on the facts of the case it can be said that a particular sale is a sale in the course of business of a dealer. If the sale has a reasonable connection with the nature of the business carried on by a dealer, then the sale would be in the course of his business. If there is no such reasonable connection between the sale effected and the nature of the business carried on by the dealer, then the sale cannot be said to be in the course of the business of the dealer, and the sale proceeds cannot therefore be included in his turnover. The fact that a particular commodity at any prior point of time was not sold by the dealer in the course of his business, or the fact that he had not frequently sold that commodity would not necessarily be decisive in ascertaining whether the sale of that commodity has been made in the course of business or not, though they would be relevant pieces of evidence and of assistance for determination of the issue. The applicant was a registered dealer doing wholesale and retail business of selling separated parts of ship machinery and ferrous and non-ferrous metals. The applicant purchased a ship from an Indian company reserving to himself an option of either using the ship for trading or breaking it and selling the separated parts. The applicant then entered into an agreement with a Costa Rica Company to sell that ship to that company for a consideration of about Rs. 4½ lakhs. At the time of the agreement the ship was lying in the docks of the Bombay Port. The agreement provided *inter alia* (1) that the steamer should be delivered as and where she lay in Bombay free from claims of other parties against the

steamer; (2) that the purchasers or their representatives should be allowed to go on board the steamer at the port of delivery; (3) that the steamer should be deemed ready for delivery as soon as the vendors received Government of India's sanction for its transfer to the Costa Rican flag and as soon as the bill of sale was ready for delivery to the bankers in London; (4) that the agreement was subject to the vendor's obtaining a transfer of flag to the Costa Rican Registry from the Government of India and that in the event of transfer of flag not being granted the contract was to become null and void; (5) that the purchasers were at liberty to use the vessel for trading or for breaking up at their option. The Government of India granted permission for sale of the ship and for transfer of the flag of the ship to the Costa Rican flag. Thereafter the ship sailed out of Indian waters. On the question whether the sale price of the ship was liable to be included in the taxable turnover of the applicant: *Held*, (1) that the activity of the applicant selling the ship to the Costa Rica Company had a very close connection with and akin to the normal course of business of the applicant and was in the course of his business activity. The sale price of the ship could therefore be included in the turnover of the applicant; (2) that as there was nothing to show that the territorial waters adjoining a particular State did not form part of the State, the sale of the ship in the Bombay docks was a sale within the State of Bombay; (3) that the transaction of sale was completed while the ship was in the Bombay docks and the delivery of the ship was taken on behalf of the purchasers in the Bombay harbour. The purchasers had, under the terms of the contract, the option to take the ship abroad or to break it up, and in taking the ship abroad, the purchasers had only exercised their option, and the sale itself had no connection therewith. The sale therefore did not fall within the exemption of Article 286(1)(b) of the Constitution. Under section 44 the Legislature specifically empowered the Collector to delegate his powers, subject to certain restrictions mentioned in the section, to persons appointed to assist him. It is implicit in these provisions that the person to whom the powers are delegated would have jurisdiction co-extensive with the Collector save and except any restrictions placed upon the powers of the Collector by the State Government. Where the Collector by a notification dated 18th May, 1953, delegated to all Assistant Collectors of Sales Tax his powers exercisable under the sections and rules mentioned in the notification, which included section 31: *Held*, that an order made by the Assistant Collector

revising an order of the Sales Tax Officer in exercise of his powers under section 31 was within his jurisdiction.—*A. EBRAHIM AND COMPANY v. THE STATE OF BOMBAY* [1962] 13 S.T.C. 877 (Mad.).

—*Company carrying on business of manufacturing cotton textiles and yarn—Sale of excess cotton and cotton waste—Liability to sales tax.*—The assessee carrying on the business of manufacturing cotton textiles and yarn applied for registration as dealers stating that they were carrying on the business of selling yarn, cloth, cotton, waste stores etc. and they were accordingly registered as dealers. The question was whether the sales of some excess cotton and cotton waste by the assessee in the relevant period were liable to be charged to sales tax: *Held*, (1) that the application submitted by the assessee for registration and the registration certificate issued to them might not be decisive of the question whether the assessee were dealers in cotton or cotton waste; (2) that although the normal business of the assessee was the manufacture of yarn and cloth, cotton waste, which was a subsidiary product, was normally sold and, in the circumstances, an intention to carry on business of selling the subsidiary product as a part of or an incident to the business of the assessee might readily be inferred and the transaction of sale might be regarded as an activity in the course of the business of the assessee. The assessee were selling cotton regularly and therefore they must be regarded as dealers in cotton and cotton waste and could be charged to sales tax.—*THE ARYODAYA SPINNING AND WEAVING COMPANY LIMITED v. THE STATE OF BOMBAY* [1960] 11 S.T.C. 141 (Bom.).

—Where the assessee sold some unserviceable goods like waste cotton, useless ropes, scrap iron, worn out and broken parts of machinery, old papers and tubes during the relevant period but the assessee was not registered as a dealer for carrying on the business of selling these goods and under its articles of association it could only manufacture and sell cotton, woollen and silk goods and nothing more: *Held*, that the sale of the unserviceable goods was not liable to taxation; *Held further*, that the mere fact that the sale was for a large sum of money in a mill of the magnitude of the assessee by itself could not be a criterion to say that it was an item of business activity carried on by the assessee. *Minerva Mills Ltd. and Another v. State of Mysore* [1956] (7 S.T.C. 148) and *Davanagere Cotton Mills Ltd. v. State of Mysore and Another* [1957] (8 S.T.C. 793; A.I.R. 1957 Mys. 72) followed. *Aryodaya Spinning and Weaving Co., Ltd. v. State of Bombay* [1960] (11 S.T.C. 141) distinguished.—*THE STATE*

OF MYSORE *v.* THE BANGALORE WOOLLEN, COTTON AND SILK MILLS, COMPANY LTD. [1962] 13 S.T.C. 106 (Mys.).

—*Company carrying on business of manufacture and sale of chemicals—Liability to tax on sale of machinery.*—Under the U. P. Sales Tax Act, 1948, the Legislature intended to tax only those transactions which fell within the scope of the business of a dealer. Therefore a company carrying on the business of manufacturing and selling chemicals and was, therefore, a dealer in chemicals was not liable to pay sales tax on the sale by it of some machinery.—THE MINING AND CHEMICAL INDUSTRIES *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1963] 14 S.T.C. 391 (All.).

—*Sale of old machinery and replacement by new one.*—The assessee-company carrying on the business of manufacturing cloth sold some of its old machinery and replaced it by new machinery. The question was whether the assessee was a dealer within the meaning of the Bombay Sales Tax Act, 1953, as regards the sale of its old machinery and was therefore liable to pay sales tax on that sale. The Tribunal found that the sale of the old machinery and its substitution by a new one was not the business of the assessee though such sales were necessary for the effective carrying on the assessee's business: *Held*, (1) that the mere fact that the assessee-company by its memorandum of association had possessed the power to resell its machinery would not mean that the sale of the old machinery had been effected by the assessee in the course of its business; (2) that the frequency, regularity and volume of the transactions will be factors relevant and helpful in determining whether any particular transaction is in the course of business or not, but the mere existence of these factors will not by themselves be sufficient to hold that the particular transaction is a business transaction; (3) that although the sale of the old machinery had been an item of several such sales effected by the assessee during the preceding four years, the sale could not be said to have been done in the course of its business activity and therefore the assessee would not be a dealer as regards that sale and was not liable to sales tax.—COMMISSIONER OF SALES TAX *v.* HINDOOSTAN SPINNING AND WEAVING COMPANY LIMITED [1964] 15 S.T.C. 69 (Mah.).

—*Carrying on business—What constitutes—Textile mill—Sale of old machines as part of programme of modernizing machinery.*—The sales which are amenable to tax under the Sales Tax Acts are not all sales, but those sales which can be said to have been effected as part of the business of the assessee or in the course of business activity. Where an assessee who is a registered dealer or

one who is liable to be registered, has effected sales which are incidental to his normal business or sales of subsidiary products or by-products arising out of his normal business, such sales would be considered as having been made in the course of his business. The word "business" having a wide connotation, spreading over a vast and an indefinite field of activity, the courts have to apply different tests to different types of sales involving a variety of articles or goods in order to ascertain whether they fall under the category of sales effected in the course of business. In the nature of things, it would be impossible to lay down a hard and fast rule which would uniformly or in a symmetry govern all cases. Therefore, though different tests governing different sets of circumstances have been laid down, such as volume and degree of frequency, continuity and regularity of transactions, the nature of the goods sold, the initial intention at the time of their manufacture or purchase etc., each test so laid down must be taken as governing the facts to which it was applied, and at best, is an indication which however would be liable to be offset by other circumstances existing in a given case. The proper way is to examine the facts and circumstances of each case and then ascertain, whether the sales in question were effected in the course of business of selling, in other words, as business activity, and whether there are circumstances which would lend to the sales the distinctive character of business. The assessees owning two textile mills, which were purchased by them some years ago as going concerns, embarked upon a programme of modernizing their machinery and as a part of that programme sold old looms, carding engines and other machinery during the relevant assessment year and realised sales tax from the purchasers in respect of 12 out of a total of 16 sales. The assessees stated that it was neither practicable nor prudent to sell the whole machinery to one party at one time, that delivery was effected against payment in cash and different sales invoices had to be prepared at the time of delivery and that therefore transactions of sale of one item of machinery would apparently appear more. The Sales Tax Authorities assessed these sales to sales tax and the Sales Tax Tribunal confirmed the assessment. The factors which weighed with the Tribunal in arriving at the conclusion were: (i) that the sales fulfilled the test of volume and degree of frequency; (ii) that they were made as part of the assessees' business; and (iii) that the assessees had realised sales tax in 12 out of 16 sales. On a reference: *Held*, (1) that ordinarily a person cannot be said to be carrying on business of selling assets of a business and, therefore,

sales of such assets when they have become useless or unserviceable either by reason of their having to be substituted by modern machinery or by the usual wear and tear, cannot be regarded as business or business activity; (2) that in the present case the test of volume and degree of frequency could not be treated as a determinative factor, nor could it be said that the sales were made with any profit motive. The collection of sales tax could not amount to an estoppel or an intention clearly indicative of the assessee having made the sales in the course of business or having treated them as a business activity. The sales were therefore not liable to sales tax. Sales of stores and other sundry articles, which have become old and unserviceable, by a textile mill are not sales liable to sales tax. Neither *kolsi* (cinders) nor waste caustic liquor can be called bye-products or subsidiary products in a textile mill. In the sales of those materials, there cannot be any profit motive. Those sales are not incidental to the business in the sense in which that expression is understood, and the volume and frequency of sales are not inconsistent with the sales not being in the course of business or not being a business activity. Such sales are therefore not liable to sales tax. The assessee had entered into contracts of sale of taxable goods manufactured by them with several dealers and the goods were sold to them at the rates mentioned in those contracts. Before, however, the purchasers took delivery, there was a fall in prices and the purchasers declined to take delivery of those goods. With a view to avoid losses, the assessee induced the purchasers to take delivery of the goods assuring them that a part of the losses borne by them as a result of the fall in prices would be compensated by way of rebate. After delivering the goods and giving invoices to the purchasers as per the contracts, the assessee issued credit notes in favour of the purchasers: On the question whether the assessee was entitled to a deduction of the rebate amount from their total turnover: *Held*, that under section 2(20) of the Bombay Sales Tax Act, 1953, turnover meant the aggregate of the amounts of sale price received and receivable by a dealer in respect of a sale of goods. The sale price receivable under the contracts would be the sale price agreed to in the contracts and if the assessee gave remissions and therefore received less than what was receivable by them under the contracts, they would not be entitled to have their turnover calculated on the basis of the contract price less the remissions permitted by them to their purchasers. Therefore the assessee was not entitled to deduct the rebate

amount from their total turnover. *Aryodaya Spinning and Weaving Company Limited v. The State of Bombay* [1960] (11 S.T.C. 141) and *L.M.S. Sadak Thamby and Co. v. The State of Madras* [1963] (14 S.T.C. 753) distinguished. *State of Mysore v. The Bangalore Woollen, Cotton and Silk Mills Company Ltd.* [1962] (13 S.T.C. 106) and *Gosri Dairy, Vyttila v. The State of Kerala* [1961] (12 S.T.C. 683) dissented from. *Commissioner of Sales Tax v. Hindoostan Spinning and Weaving Company Ltd.* [1964] (15 S.T.C. 69) and *Mining and Chemical Industries v. Commissioner of Sales Tax* [1963] (14 S.T.C. 391) relied on.—*AMBICA MILLS LTD., AND OTHERS v. THE STATE OF GUJARAT, AND ANOTHER* [1964] 15 S.T.C. 367 (Guj.) affirmed in [1967] 19 S.T.C. 12 (S.C.).

—*Sale of Bible and other Christian religious books by Evangelical Literature Service—Liability to sales tax—Whether society dealer—Continuous conduct of buying and selling and presence of profit motive—Whether sufficient to make society dealer.*—Under the Madras General Sales Tax Act, 1959, it is not every sale or purchase that will be liable to tax. The tax is attracted only by the turnover of a person carrying on the business of buying or selling or both. A dealer under the Act is one who is engaged in trade or commerce as such of buying and selling of goods. A continuous conduct of buying and selling and/or presence of motive to make profit, though they are important components, will not, by themselves, be decisive on the question. The Evangelical Literature Service, a society registered under Act 21 of 1860, is not a dealer within the meaning of the Madras General Sales Tax Act, 1959, and is not liable to sales tax on the turnover of sales of Bible and other Christian religious books. The object of the society, which is merely to print, publish and distribute Christian literature, is not commercial in character and the object does not become commercial because it is to be achieved by the normal business means. *Religious Tract and Book Society of Scotland v. Forbes* [1896] (3 Tax Cas. 415) and *Fiaz Ahmed & Co. v. State of Madras* [1964] (15 S.T.C. 201) referred to.—*EVANGELICAL LITERATURE SERVICE v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS* [1964] 15 S.T.C. 825 (Mad.).

—*Director of Supplies and Disposals—Whether dealer and liable to pay sales tax.*—The Directorate of Disposals (United States Transfer Directorate) engaged in the disposal of surplus American War Equipment taken over by the Government of India was carrying on the business of selling goods in West Bengal and the Director was therefore a "dealer" within the meaning of section 2(c)

of the Bengal Finance (Sales Tax) Act, 1941.—*DIRECTOR OF SUPPLIES AND DISPOSALS v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1965] 16 S.T.C. 197 (Cal.) reversed by the Supreme Court in [1967] 20 S.T.C. 398. See below:—

—The Directorate of Disposals (United States Transfer Directorate) was an organisation of the Government of India responsible for the disposal of surplus American war equipment which had been taken over by the Government of India. When the equipment was substantially disposed of, it merged with the office of the Regional Commissioner of Disposals. Later on the Supply and Disposal Services of the Government of India were merged and the Department was redesignated as Directorate of Supplies and Disposals. The function of this Directorate was to dispose of surplus goods and to purchase goods on behalf of the Government of India. A considerable portion of the surplus material left in India at the conclusion of the last war by the American Government was used by the Government of India itself, and there was a huge surplus left with the Government of India which was either no longer useful or had become obsolete. The surplus goods were sold to the public in a series of transactions with the help of a widespread organisation. The question was whether the Director of Supplies and Disposals carried on the business of selling goods in West Bengal and was a “dealer” within the meaning of section 2(c) of the Bengal Finance (Sales Tax) Act, 1941, and had to get himself registered as a dealer under that Act: *Held*, per SIKRI and RAMASWAMI, JJ. (SHAH, J., dissenting) that the Director was not carrying on the business of buying or selling goods within the meaning of section 2(c) of the Act. He was not selling surplus goods for profit but he was merely disposing of the surplus material by way of realisation and the transactions were therefore not taxable as sales under the Act. The Director was not a dealer within the meaning of section 2(c). Per SIKRI and RAMASWAMI, JJ.—The expression “business”, though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive; there must be a some real and systematic or organised course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business, ordinarily

there must exist the characteristics of volume, frequency, continuity and system indicating an intention to continue the activity of carrying on the transactions for a profit. But no single test or group of tests is decisive of the intention to carry on a business. It must be decided in the circumstances of each particular case whether an inference could be raised that the assessee is carrying on the business of purchasing or selling of goods within the meaning of the statute. Per SHAH, J.—It could not be said that the activity undertaken by the Government of India for disposal of the American surplus war equipment was merely an activity of the nature of realisation of capital. There was an organised course of activity, it was systematic and it was with a set purpose of making profit. The tests of frequency, continuity and system which are generally employed in determining whether an activity for the disposal of goods owned by a person indicates an intention to carry on business were satisfied in the present case. Decision of the Calcutta High Court in *Director of Supplies and Disposals v. Member, Board of Revenue, West Bengal* [1965] (16 S.T.C. 197) reversed. *Commissioner of Taxes v. British Australian Wool Realization Association Limited* ([1931] A.C. 224) relied on. *The State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) and *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax* [1954] (26 I.T.R. 765) referred to.—*DIRECTOR OF SUPPLIES AND DISPOSALS, CALCUTTA v. MEMBER, BOARD OF REVENUE, WEST BENGAL, CALCUTTA* [1967] 20 S.T.C. 398 (S.C.).

—*Company carrying on business of manufacture and sale of machinery—Purchase of arc furnaces for its manufacturing business and sale of them when found unsuitable—Sale turnover—Whether liable to sales tax.*—The petitioner-company, carrying on the business of manufacture and sale of machinery and maintaining for that purpose a foundry, purchased in 1952 for its manufacturing business two arc furnaces for a sum of about Rs. 2 lakhs and sold them in 1958 for about Rs. 4 lakhs when they were found to be wholly unsuitable for the purpose for which they were purchased. The company contended that it was not liable to pay sales tax on the turnover of Rs. 4 lakhs on the ground that the two arc furnaces were not sold in the course of its business but the assessing authorities and the Tribunal rejected its claim. On a revision to the High Court: *Held*, that judged by any test, test of frequency, volume, regularity and continuity or the existence of profit motive or test of reasonable connection with the normal business activity of the assessee, it could not be said that the isolated sale of the

two arc furnaces, which were part of the capital asset of the company, would amount to a sale in the course of the business which the assessee carried on and therefore the turnover of Rs. 4 lakhs was not liable to sales tax. Test laid down in *Ambica Mills Ltd. v. State of Gujarat* [1964] (15 S.T.C. 367 at page 392) applied.—*K.C.P. LIMITED v. THE STATE OF MADRAS* [1965] 16 S.T.C. 156 (Mad.) affirmed by Supreme Court in [1969] 23 S.T.C. 173. See below:—

—The respondent, a company whose main business was the manufacture and sale of machinery and parts of machinery and accessories, imported in 1952, two arc furnaces for the purpose of having them installed as a part of the plant in its foundry. In the account books and in the balance sheet of the company, these furnaces were shown under the head “workshop equipment”. Since the furnaces were found to be unsuitable for the purpose for which they had been purchased, the respondent sold them in 1958 to a purchaser in Calcutta for a sum of Rs. 4,20,000 and made a profit of about Rs. 2 lakhs. The question was whether the sum of Rs. 4,20,000 had to be included in the turnover of inter-State sales of the company: *Held*, that the arc furnaces were either fixed assets or discarded goods which had been found to be unsuitable or unserviceable and the sale proceeds of the furnaces could not therefore be included in the turnover of the company for the purpose of determining its liability to sales tax under the Central Sales Tax Act, 1956. Decision of the Madras High Court in *K. C. P. Limited v. The State of Madras* [1965] (16 S.T.C. 156) affirmed. *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] (19 S.T.C. 1) and *State of Gujarat v. Vivekanand Mills* [1967] (19 S.T.C. 103) applied. *State of Andhra Pradesh v. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) distinguished. *Ambica Mills Ltd. v. State of Gujarat* [1964] (15 S.T.C. 367) referred to.—*THE STATE OF MADRAS v. K. C. P. LTD.* [1969] 23 S.T.C. 173 (S.C.).

—*Textile mill—Purchase of new machineries—Sales at a loss of such machineries on finding them not suitable for the business—Whether casual sales or sales made in the course of business—Liability to sales tax—Collection of sales tax—Effect.*—The petitioners carried on the business of manufacturing and selling cotton textile goods and were registered as such under the Bombay Sales Tax Act, 1953. In or about 1955 the petitioners imported under actual user's licence a mercerizing plant from Switzerland at the cost of Rs. 3,20,000 and two doubling plants from United Kingdom, one at the cost of Rs. 83,558 and the other at

the cost of Rs. 63,976. The petitioners also purchased from Bombay at about the same time a cooling plant at the cost of Rs. 24,375. After import it was found that the machineries were not suitable for the requirements of the petitioners and therefore they sold them to a sister concern for a sum of Rs. 4,82,740 under five different bills bearing dates between 16th October, 1955, and 25th December, 1955. In assessing the petitioners for the period 1st April, 1955, to 4th March, 1956, the Sales Tax Officer included in the petitioners' turnover the price received by them on these sales and assessed them to tax. The petitioners appealed and on 24th August, 1960, after the coming into force of the Bombay Sales Tax Act, 1959, the Assistant Commissioner of Sales Tax made an order holding that the sales were casual sales not assessable to sales tax. On 7th September, 1961, the Commissioner revised the order of the Assistant Commissioner and held that the sales were in the course of the petitioners' business and were liable to sales tax inasmuch as they satisfied the test of volume and frequency. The Commissioner also relied on the fact that the petitioners had collected sales tax from the purchaser and had also taken from the purchaser certificates in “L” Form in respect of general sales tax. On appeal the Commissioner's decision was reversed by the Tribunal on a preliminary question. Subsequently the Gujarat Legislature passed an Act validating the decision of the Commissioner. The petitioners thereupon filed a petition under Article 226 of the Constitution. The question that arose for decision was whether the order of the Commissioner imposing sales tax on the petitioners disclosed an error of law apparent on the face of the record and therefore could be quashed in a petition filed under Article 226 of the Constitution of India: *Held*, that the Commissioner clearly committed an error of law apparent on the record in taking the view that the sales were not casual sales but were sales forming part of the business activity of the petitioners and therefore his order must be quashed. Though the test of volume and frequency applied by the Commissioner was a relevant test, he was clearly in error in applying it as if it were a decisive test and so far as the second test based on the collection of amounts by way of sales tax and obtaining of certificates in “L” Form from the purchaser was concerned, that was no test at all. The principal test which must be applied was the test of profit motive and judged by this test, the sales were casual sales not liable to sales tax. It would be impossible to say even by applying the test of volume and frequency that the sales effected

were of such a character that an inference must necessarily follow that they were effected as part of business activity. *Ambica Mills Ltd. and Others v. The State of Gujarat and Another* [1964] (15 S.T.C. 367) followed. *The State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) discussed.—*SAYAJI MILLS LTD. v. THE STATE OF GUJARAT* [1966] 18 S.T.C. 287 (Guj.).

—*Company carrying on business of manufacturing and selling cotton textile goods—Sales of stores, materials and other goods and old looms and machinery—Whether casual sales—Liability to sales tax.*—In order to decide the question whether certain sales were sales in the course of business liable to sales tax, the test of volume and degree of frequency is not a conclusive or determinative test. It can at best be only indicative of a profit-making motive behind the sales but where the commodity sold is in the nature of a fixed capital asset such as old looms and machinery or consists of stores, materials and other goods purchased with the intention of using in the manufacture of cotton textile goods and not selling at a profit at some future time, this test would break down for it would not furnish any indication of a profit-making motive behind the sales. The profit-making motive would be excluded by the nature of the commodity and the initial or original intention at the time of purchase. Where the assessee-company carrying on the business of manufacturing and selling cotton textile goods sold diverse kinds of stores, materials and other goods and also some old looms and machinery and the evidence showed that the sales were effected not from any profit-motive but because they had become old, useless and unserviceable and were no longer required by the assessee: *Held*, that the sales were not sales in the course of business and were not liable to sales tax; *Held also*, the fact that the assessee had collected sales tax from the purchasers in respect of the sales could not be determinative of the character of the sales. Cotton waste is a by-product which comes out in the process of manufacture as a result of raw cotton being subjected to various processes and cannot, therefore, be regarded as “raw cotton (whether ginned or unginned)” within the meaning of entry 1 of Schedule B to the Bombay Sales Tax Act, 1953, and since there is no other specific entry covering cotton waste, it must fall within the residuary entry 80 of Schedule B. In order that a dealer may be said to be carrying on the business of buying goods, it is not necessary that he should be buying goods for the purpose of selling them. Even if he buys goods for use in manufacturing

other goods for sale, he would still be a dealer buying goods if the integrated activity of buying and disposal was pursued with the object of making profit. Therefore where raw materials and consumable stores were purchased by an assessee for use in manufacturing cotton textile goods for sale, they must be held to have been purchased in the course of the business of the assessee and were, therefore, liable to purchase tax under section 10. The principle laid down by the Supreme Court in *State of Andhra Pradesh v. Abdul Bakshi & Bros.* [1964] (15 S.T.C. 644) is not limited in its application to a case where raw materials are purchased by the assessee and must equally apply where the goods purchased by the assessee are consumable stores. The decision of the Supreme Court in *State of Andhra Pradesh v. Abdul Bakshi & Bros.* [1964] (15 S.T.C. 644) does not throw any doubt on the validity of the ratio in *Ambica Mills Ltd. v. State of Gujarat* [1964] (15 S.T.C. 367). *Ambica Mills Ltd. v. State of Gujarat* [1964] (15 S.T.C. 367), *State of Andhra Pradesh v. Abdul Bakshi & Bros.* [1964] (15 S.T.C. 644; A.I.R. 1965 S.C. 531) and *Ahmedabad New Cotton Mills Co. Ltd. v. State of Gujarat* (Sales Tax Reference No. 13 of 1961) followed. *Sayaji Mills Ltd. v. State of Gujarat* [1966] (18 S.T.C. 287) referred to.—*ARVIND MILLS LTD. v. STATE OF GUJARAT* [1966] 18 S.T.C. 311 (Guj.).

—*Company manufacturing cotton textiles—Sales of old discarded goods, coal, by-products and subsidiary products—Whether company carries on business of selling such goods—Liability to sales tax.*—Under the Bombay Sales Tax Act, 1953, in the turnover of a person carrying on the business of selling one commodity will not be included the price received by him by sale of another commodity, unless he carries on the business of selling that other commodity. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive. By the use of the expression “profit-motive” it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. In actual practice, the profit-motive may be easily discernible in some transactions; in others it would have to be inferred from a review of the circumstances attendant upon the transaction. For instance, where a person purchases a commodity in bulk and sells it in

retail, it may readily be inferred that he has a profit-motive in entering into the series of transactions of purchase and sale. A similar inference may be raised where a person manufactures finished goods from raw materials belonging to him or purchased by him and sells them. But where a person comes to own in the course of his business of manufacturing or selling a commodity, some other commodity which is not a by-product or a subsidiary product of that business and he sells that commodity, cogent evidence that he has intention to carry on business of selling that commodity would be required. Where a person in the course of carrying on a business is required to dispose of what may be called his fixed assets or his discarded goods acquired in the course of the business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise. To infer from a course of transactions that it is intended thereby to carry on the business ordinarily the characteristics of volume, frequency, continuity and regularity indicating an intention to continue the activity of carrying on the transactions must exist. But no test is decisive of the intention to carry on the business: in the light of all the circumstances an inference that a person desires to carry on the business of selling goods may be raised. To attribute an intention to carry on business of selling goods it is not sufficient that the assessee was carrying on business in some commodity and he disposes of for a price articles discarded, surplus or unserviceable. Undoubtedly from the frequency, volume, continuity and regularity of transactions carried on with a profit-motive, an inference that it was intended to carry on business in the commodity may arise. But it does not arise merely because the price received by sale of discarded goods enters the accounts of the trader and may on an overall view enhance his total profit, or indirectly reduce the cost of production of goods in the business of selling in which he is engaged. An attempt to realise price by sale of surplus, unserviceable or discarded goods does not necessarily lead to an inference that business is intended to be carried on in those goods, and the fact that unserviceable goods are sold and not stored so that badly needed space is available for the business of the assessee also does not lead to the inference that business is intended to be carried on in selling those goods. Where a company carrying on the business of manufacturing and selling cotton textiles disposes of miscellaneous old and discarded items such as stores, machinery, iron scrap, cans, boxes, cotton ropes, rags, etc., it cannot be said to carry on the business of selling these items of goods. From the

fact that the sales of these items were frequent and their volume was large it cannot be presumed that when the goods were acquired there was an intention to carry on the business in these discarded materials. Nor are the discarded goods, by-products or subsidiary products of or arising in the course of the manufacturing process. A person who sells goods which are unserviceable or unsuitable for his business does not on that account become a dealer in those goods, unless he has an intention to carry on the business of selling those goods. But when a subsidiary product is turned out in the factory of the assessee regularly and continuously and it is being sold from time to time, an intention to carry on business in such product may be reasonably attributed to the assessee. Kolsi and waste caustic liquor may be regarded as by-products or subsidiary products turned out in the course of the manufacture of cloth and the sale of such products would be incidental to the business of manufacturing and selling cloth and would therefore be liable to sales tax. Mere sale of a commodity which the assessee requires for the purpose of its business and which has been purchased for use in that business will not justify an inference that a business of selling that commodity was intended, unless there are circumstances existing at the time when the commodity was purchased or which have come into existence later which establish such an intention. *Held, accordingly*, that where a company which carried on the business of manufacturing and selling cotton textiles sold a part of the coal which was necessary for the purpose of lighting its furnaces and heating its boilers, the burden of proving that the company was carrying on the business of selling coal was upon the Sales Tax Authorities and if they made no investigation and had come to such a conclusion merely because of the frequency and volume of the sales of coal, the inference could not be sustained. *State of Andhra Pradesh v. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) distinguished. *Gosri Dairy v. State of Kerala* [1961] (12 S.T.C. 683) disapproved. *Aryodaya Spinning and Weaving Co. Ltd. v. State of Bombay* [1960] (11 S.T.C. 141) applied.—THE STATE OF GUJARAT v. RAIPUR MANUFACTURING CO., LTD. [1967] 19 S.T.C. 1 (S.C.).

[Following the decision in *The State of Gujarat v. Raipur Manufacturing Co. Ltd.* (Civil Appeal No. 603 of 1965) the Supreme Court of India consisting of J. C. SHAH, V. RAMASWAMI and V. BHARGAVA, JJ., delivered judgments on 30th September, 1966, in *The State of Gujarat v. Ashok Mills Ltd.* (Civil Appeal No. 604 of 1965), *The*

State of Gujarat v. Arvind Mills Ltd. (Civil Appeals Nos. 605 and 608 of 1965) and *The State of Gujarat v. Ambica Mills Ltd.* (Civil Appeal No. 606 of 1965) and substantially affirmed the decision of the Gujarat High Court in *Ambica Mills Ltd. and Others v. The State of Gujarat and Another* [1964] (15 S.T.C. 367).—THE STATE OF GUJARAT *v.* ASHOK MILLS LTD. [1967] 19 S.T.C. 11 (S.C.), THE STATE OF GUJARAT *v.* ARVIND MILLS LTD. [1967] 19 S.T.C. 12 (S.C.), THE STATE OF GUJARAT *v.* AMBICA MILLS LTD. [1967] 19 S.T.C. 12 (S.C.).

—See also the decision of the Supreme Court in *THE STATE OF ANDHRA PRADESH v. H. ABDUL BAKSHI AND BROTHERS* [1964] 15 S.T.C. 644 (S.C.).

—*Textile mill—Sale of cotton—Sales to avoid locking up of funds—Whether sales in the course of business—Whether liable to sales tax.*—The respondent carrying on the business of manufacturing cotton fabrics had agreed to purchase under user's import licence 500 bales of Californian cotton in January, 1953. Believing that the shipment would arrive after six months, the respondent made arrangements to purchase 300 bales of similar cotton to meet its immediate requirements. The consignment of Californian cotton arrived unexpectedly in April, 1953, and the respondent had to take delivery of the cotton. A large sum of money belonging to the respondent was blocked up and with the sanction of the authorities the respondent sold 411 bales of this cotton to other mills in two lots on May 31, 1953: *Held*, on the facts, that in selling the cotton with a view to avoid locking up of funds, it could not be inferred that the respondent sold the goods with intention to carry on the business of selling cotton and the sales were not liable to sales tax. Decision of the Gujarat High Court affirmed.—THE STATE OF GUJARAT *v.* VIVEKANAND MILLS [1967] 19 S.T.C. 103 (S.C.).

—*Textile mill keeping fair price shop—Whether carries on business.*—Where the assessee, a limited liability company manufacturing cotton yarn, in order to provide amenity to its workmen, had opened a fair price shop so that commodities might be made available to the workmen at fair prices, the assessee could not be said to be carrying on the business of selling commodities in the fair price shop in a trade or commercial sense even if profit accrued to it and, therefore, it was not, with reference to the fair price shop, a dealer within the meaning of the Act.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE

DIVISION, COIMBATORE v. SRI THIRUMAGAL MILLS LIMITED [1967] 20 S.T.C. 287 (Mad.).

—*Onus of proof—Latex produced from assessee's rubber trees converted into sheets—Conversion a process essential for transport and marketing latex—Assessee, whether dealer.*—Where the only facts that were established were that the assessee converted the latex tapped from its rubber trees into sheets and effected a sale of those sheets to its customers and that the conversion of latex into sheets was a process essential for the transport and marketing of the produce: *Held*, that the onus of proving that the assessee was carrying on business and was, therefore, a "dealer" within the meaning of section 2(b) of the Central Sales Tax Act, 1956, was on the department and that the department had not discharged that onus. *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] (19 S.T.C. 1) applied. Decision of the Kerala High Court in *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co. Ltd.* [1964] (15 S.T.C. 615) affirmed.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON *v.* TRAVANCORE RUBBER AND TEA CO. [1967] 20 S.T.C. 520 (S.C.).

—*Government department purchasing and selling essential commodities for the benefit of people—Whether carries on business.*—A business can be said to be carried on by a Government department only if it makes sales or purchases of commodities primarily with a view to earning profit. If the Government or any of its departments have to embark on the work of sale or purchase of essential commodities with a view to ensuring their equitable distribution, then this will not necessarily lead to the conclusion that the Government or its departments were carrying on business so as to render the sales of the commodities in the hands of the Government or its departments liable to sales tax. Mere supplying essential commodities for the benefit of the people is normally not carrying on business as is contemplated by section 2(f) of the Act.—NAGAU SAHAR KENDRIYA SAHAKARI KAR VIKRAYA SANGH AND ANOTHER *v.* THE STATE OF RAJASTHAN AND OTHERS [1968] 21 S.T.C. 114 (Raj.).

—*Textile mill—Sales of empty tins, dealwood boxes, hoop iron, tiles, cinder etc.—Liability to sales tax.*—Where the assessee, a textile mill registered as a dealer in yarn and cotton, had to dispose of empty tins, dealwood boxes, hoop iron, tiles, cinder etc. which came to it in the course of its business: *Held*, that the turnover relating to the sale of those goods was not liable to sales tax inasmuch as the intention in selling them was

not to do business as such. *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] (19 S.T.C. 1) followed.—*LOYAL TEXTILE MILLS LTD. v. THE STATE OF MADRAS* [1968] 21 S.T.C. 195 (Mad.).

—*Society, club or other unincorporated body—Whether falls within the opening or last portion of definition of “dealer”—Whether its activity should be carried on as business—Mahabaleshwar Club—Whether dealer—Whether liable to sales tax on the supply of refreshments to its members.*—In view of the fact that the term “person” in the opening part of the definition of the term “dealer” in section 2(11) of the Bombay Sales Tax Act, 1959, includes, by virtue of the definition in section 2(19), bodies “whether incorporated or not”, societies, clubs and other unincorporated bodies fall within the opening part of section 2(11), and it is not possible to read the concluding part of section 2(11) as an independent clause governed by the verb “means”. The Legislature has inserted the last part of the definition in section 2(11) *ex majore cautela* and it must be read as governed by the verb “includes”. Therefore unregistered societies, clubs or other associations of persons which buy goods from, or sell goods to, their members would fall within the definition of “dealer” in section 2(11) and be liable to sales tax only if such sales or purchases have been effected by way of “business”. As the object of the Mahabaleshwar Club was to provide recreation for its members, the Club, while supplying articles like food, refreshments, cigarettes etc. to its members, was not effecting a sale of those articles to its members by way of business and, therefore, the Club was not a dealer within section 2(11) of the Act.—*THE MAHABALESHWAR CLUB v. THE STATE OF MAHARASHTRA* [1968] 22 S.T.C. 123 (Bom.).

—See also [1967] 20 S.T.C. 116 (Bom.).

—*Institution to preserve lives of stray cattle and other stray animals—Sale of cotton grown on its lands, carcasses of animals, milk and dung—Whether institution dealer and liable to sales tax.*—Mere buying or selling of goods otherwise than in the course of a business activity would not constitute a person a dealer within the meaning of section 2(6) of the Bombay Sales Tax Act, 1953, or section 2(11) of the Bombay Sales Tax Act, 1959. The assessee, a public charitable institution, was founded in or about 1796 A.D. with the object of keeping and preserving the lives of stray dogs, stray cattle and other stray animals. After 1950 the assessee also maintained a pedigree cattle farm. The assessee had agricultural lands which it cultivated personally through its servants and sold the

cotton grown on these lands. The assessee also sold the carcasses of animals dying in the institution, milk from the pedigree cattle, and dung for use as fertilizer. The question was whether the assessee was a “dealer” within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959, and was liable to sales tax on the sale of the articles: *Held*, (1) that the assessee was actuated entirely by charitable, religious or philanthropic motive of non-violence by preserving the lives of voiceless animals and it did not carry on any business activity with any profit-motive and merely because incidental sales were done of the animal products, it could not be considered as carrying on the business of selling those goods; (2) that as the cotton which was sold was grown on lands of the assessee by personal cultivation through servants, the assessee came within the exception of the definition of the term “dealer” in section 2(11) of the Act; (3) that the assessee was therefore not a “dealer” within the meaning of section 2(11) of the Act and was not liable to sales tax.—*THE STATE OF GUJARAT v. SHRI SURAT PANJARAPOLE* [1969] 23 S.T.C. 57 (Guj.).

Business carried on must be his own business
—*Son managing business of father—Whether son can be regarded as dealer.*—A person can be regarded as a “dealer” within the meaning of the definition in section 2(6) of the Bombay Sales Tax Act, 1953, provided he is carrying on his own business of selling goods. It may be that he may be selling somebody else’s goods but the business which he carries on must be his own in order that such a person should fall within the definition of a dealer. The fact that such a person would be receiving commission or remuneration for selling somebody else’s goods would not make any difference. A person who manages the business of another even though in the course of that business he has to sell his goods cannot be said to be carrying on the business of selling goods. What he does is to manage the business of someone else though his activity may involve the selling of goods, and nothing more. The very fact that the Legislature enacted an explanation for including manager or an agent within the definition of a “dealer” in certain circumstances makes it clear that the Legislature did not intend to include either a manager or an agent in the main definition of “dealer”. Before regarding the manager of a person as a “dealer” within the meaning of the explanation to the definition, the department must establish that the person was not resident in the State of Bombay at the relevant time. It is the person who is a registered dealer or who is liable to be registered as a dealer that is liable to pay the tax under the Bombay

Sales Tax Act, 1953. Where the appellant's father was the registered dealer, it was he who was liable to pay the tax and a notice under section 15 could be issued only against him. After death of the appellant's father no notice under section 15 could be issued to anyone in respect of the turnover which had escaped assessment.—*KISHENCHAND TOLARAM v. A. B. GHANEKAR AND OTHERS* [1961] 12 S.T.C. 562 (Bom.).

Purchasing goods for consumption in business

—A dealer who carries on business in hides and skins and who purchases tanning bark for use in the process of tanning raw hides and skins is not liable to pay tax on the purchases of tanning bark under rule 5(2) of the Hyderabad General Sales Tax Rules, 1950. For attracting this rule the assessee must be carrying on business in the particular category of articles specified in that sub-rule. The expression "business" in the definition of "dealer" is used in a commercial sense and the profit motive must be with regard to the commodities in regard to which the impost is sought to be levied. A person who buys large quantities of any category of goods for the purpose of consumption or for any other purpose unconnected with the business in that commodity cannot be regarded as a businessman within the mischief of rule 5.—*H. ABDUL BAKSHI & BROTHERS, HYDERABAD v. THE STATE ANDHRA PRADESH* [1960] 11 S.T.C. 526 (A.P.). On appeal to Supreme Court this decision was reversed. See the next para.

—The expression "business" though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer under the Hyderabad General Sales Tax Act, 1950, a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit motive will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer: the definition merely requires that the buying of the commodity mentioned in rule 5(2) of the Hyderabad General Sales Tax Rules, 1950, must

be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity. Therefore a registered dealer carrying on the business of tanning hides and skins and of selling the tanned hides and skins is liable to pay tax under rule 5(2) of the Hyderabad General Sales Tax Rules, 1950, on the price of tanning bark bought by him for consumption in the tannery. *H. Abdul Bakshi & Brothers, Hyderabad v. The State of Andhra Pradesh* [1960] (11 S.T.C. 526) reversed. *L. M. S. Sadak Thamby and Co. v. The State of Madras* [1963] (14 S.T.C. 753) approved.—*THE STATE OF ANDHRA PRADESH v. H. ABDUL BAKSHI AND BROS.* [1964] 15 S.T.C. 644 (S.C.).

—The definition of "dealer" in section 2(g) of the Madras General Sales Tax Act, 1959, would include a person who merely carries on a business of buying goods. But the buying of goods must be in the course of business which means that the activity should be associated with a profit-making motive. It is however not necessary that the dealer who bought the goods should sell them as such. It may be that the dealer is engaged in the production of goods in the course of which the goods which he purchased are utilised and converted into other goods or the goods bought are necessary ingredients in the manufacture of the goods sold. In an integrated transaction of that nature it cannot be said that the purchase is devoid of the profit motive. If the goods purchased by a dealer are utilised for the purpose of improvement of other moveable properties which he sells, reading the definitions of "dealer" and "goods" together, it should be said that the purchase itself is in the course of the business, whether the identical goods purchased are sold or not. That part of the definition of expression "goods" in the Act which include materials to be "used in the fitting out, improvement or repair of movable property" is clearly intended to cover cases whether the goods are those not sold but are utilised in other processes resulting in a product which the dealer sells. The assessee was dealer in tanned hides and skins. They were assessed to tax under the Madras General Sales Tax Act, 1959, on a certain sum representing the purchase value of tanning materials which were liable to tax at the point of last purchase in the State under item 59 of the First Schedule to the Act. The assessee contended that they were not dealers in tanning

materials, that the tanning materials had been consumed in the course of tanning the raw hides and that unless it was found that they sold the tanning materials as such they could not be regarded as dealers in tanning materials and they were therefore not liable to pay tax: *Held*, that the assessee were dealers in tanning materials and were rightly assessed to tax on the purchase value of the tanning materials. The use of the tanning materials in the tanning process contributes to the making of profit as a dealer and it should therefore follow that even the business of purchasing the tanning materials involves the profit motive. If the existence of the profit motive in entering into the transaction brings the series of transactions within the expression "in the course of business", the process of buying has the profit motive as a necessary ingredient. *H. Abdul Bakshi & Brothers, Hyderabad v. The State of Andhra Pradesh* [1960] (11 S.T.C. 526) dissented from.—*L. M. S. SADAK THAMBY AND Co. v. THE STATE OF MADRAS* [1963] 14 S.T.C. 753 (Mad.).

—Any person who is engaged in the activity of buying, selling, supplying or distributing goods in the course of business falls within the definition of "dealer" in section 2(g) of the Madras General Sales Tax Act, 1959. There must however be a combination of business and one or the other of the several activities of buying, selling or supplying specified in the definition. The presence of one element alone will not do. A business without a specified activity or some activity outside the course of business would not suffice to constitute a dealer. But the activity need not be the entire business. It can be confined to a part of a wide range of several activities which together form a business. The petitioners were mere tanners. Their occupation was to tan hides and skins for certain specified charges. They neither bought nor sold hides and skins or tanning materials as such. For the purpose of tanning they purchased tanning materials and, being the last purchasers, they were assessed to tax under entry 59 of the First Schedule to the Madras General Sales Tax Act, 1959. The petitioners contended that although there was a profit motive in their activity of tanning goods for others, the mere purchase by them of tanning materials for the purpose of earning remuneration for the services rendered by them for tanning goods of others would not attract a tax liability: *Held*, that on a plain reading of the provisions of the Act the petitioners' assessment on the purchase price of the tanning materials was valid and proper. The principle

laid down in *Sadak Thamby & Co. v. State of Madras* [1963] (14 S.T.C. 753) is that a buying activity, even though without a counterpart of a selling activity, in the course of a business, whether it be as a dealer in hides or carrying on of the tannery with profit motive, would be adequate to bring the turnover of purchase price of tanning materials to tax under the Act.—*FIJAZ AHMED & Co. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 201 (Mad.).

—*Building contractor—No turnover of sales—Purchase of building materials from unregistered dealers for execution of contract works—Liability to pay purchase tax under section 7.*—Under the Madhya Pradesh General Sales Tax Act, 1958, if goods are bought in the course of business for sale or use with a view to make profit out of the integrated activity of buying and disposal, then there would be a business of buying. The assessee was a building contractor and registered as a dealer under the Madhya Pradesh General Sales Tax Act, 1958. In the course of his business, the assessee purchased certain goods and materials for the execution of contract works undertaken by him. The Sales Tax Authorities and the Tribunal held that although during the relevant period the assessee's turnover of sales was nil, as he had purchased building materials from unregistered dealers, he was liable to pay purchase tax on these purchases under section 7. On a reference: *Held*, that the assessee was a dealer and was clearly liable to pay purchase tax under section 7 and that he did not cease to be a dealer merely because during the assessment period his turnover of sales was found to be nil.—*GANESH PRASAD DIXIT v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1966] 17 S.T.C. 14 (M.P.).

—*Mere purchase of goods without producing any saleable commodity—Liability to tax—Motion picture producers—Pictures produced not sold but were given for exhibition under certain financial arrangements—Purchase of raw films by producers—Whether producers dealers.*—In order that a person may be said to be carrying on the business of buying goods within the definition of "dealer" in the Bombay Sales Tax Act, 1959, the business for which the goods are bought must form part of the integrated activity of buying and disposal. There must be a nexus between the article purchased and the article produced, for the production of which the article purchased is used, and the article so produced must be saleable *i.e.*, capable of being sold. The observations in the judgment of the Supreme Court in *The State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) that the goods may be

used as an ingredient or in aid of manufacturing process leading to the production of a saleable commodity mean that the commodity which is produced, of which the goods purchased may be an ingredient or in making of which the goods purchased may have figured as an aid in the process of manufacture must have saleability. It is not necessary that the goods must necessarily be sold, because that depends on the volition of the manufacturer. The assessee producing motion pictures with the ultimate object of making profit by exhibition of such pictures, did not sell the pictures so produced by them, but gave away the pictures for exhibition under certain financial arrangements retaining with themselves the ownership in the pictures, including the copyright. The assessee bought raw films as and when required for the purpose of producing the motion pictures. The question was whether the assessee was carrying on the business of buying goods and were therefore dealers within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959: *Held*, (i) that the connotation of the word "business" in the definition of "dealer" in section 2(11) necessarily implies a continuous course of activities carried on for commercial purposes, generally with the intention of earning profit and that it cannot be said that a person engaged in the activity of producing films cannot be said to be engaged in business; (ii) that the assessee would be considered to be "dealers" within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959, if the cinematograph films produced by them were found to be a saleable commodity. *The State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* [1964] (15 S.T.C. 644) explained. *Fiaz Ahmed & Co. v. The State of Madras* [1964] (15 S.T.C. 201) dissented from.—*K. S. FILMS v. THE STATE OF MAHARASHTRA* [1969] 23 S.T.C. 121 (Bom.).

Person purchasing goods for customers—Whether dealer.—The appellants, the Bombay Film Laboratories Ltd., carried on the business of developing, printing and processing cinema films. The appellants prepared prints of pictures on raw positive films from negatives brought to them by producers and distributors. Some producers and distributors purchased raw positive films necessary for making the prints and furnished the same to the appellants for making the prints. Others asked the appellants to accommodate them with the raw positive films necessary for making their prints out of stocks of raw positive films which the appellants obtained from suppliers. The customers paid the appellants the cost of raw positive films and processing charges when taking delivery of the prints. The

cost of the raw positive films as billed by the appellants to the customers was the actual cost paid by the appellants. In March, 1947, on a representation made by the Indian Motion Picture Producers' Association the Assistant Commissioner of Sales Tax came to the conclusion that the appellants were not dealers and cancelled their certificate of registration. In accordance with this order the appellants did not recover any sales tax from their customers but paid sales tax to the suppliers from whom they purchased the raw films. In December, 1953, the appellants applied to the Collector for a ruling on the point and the Collector held as follows:—"Charges received in respect of the work of developing or processing of film supplied by your clients do not amount to 'sale price' as defined under the Bombay Sales Tax Act. Where the raw film is supplied by your clients with orders to print copies out of it, charges received for such jobs do not amount to 'sale price'. But where the raw film is purchased by you on account of your customers and you print copies on such film (even at the instructions of your clients), the charges received in respect of such jobs (inclusive of the cost of the raw film and the printing charges) form 'sale price' as defined under the old Act as well as the new Act and they are subject to the sales tax." On appeal the Sales Tax Tribunal held that (1) the decision of the Assistant Commissioner of Sales Tax had the result of making the appellants follow a specific course of action which established a case of estoppel against the Government so that the Government should not be permitted so far as the transactions which were so affected by the decision were concerned, to deny the truth of the decision and to act differently; (2) that, as regards future transactions, as the purchase of raw films or the sale of them after being processed did not bring in any profit to the appellants, it could not be said that they were carrying on the business of buying or selling such goods. The purchase of the raw films was made by the appellants on behalf of their customers as their agents; it was a particular kind of service and incidental, in certain cases, to the business of processing the films. Therefore as regards the raw films purchased on behalf of the customers and the work of processing done by the appellants, the appellants could not be regarded as a dealer and therefore it was not necessary for them to register as dealers. The word "business" should be interpreted as meaning "buying or selling with a view to earn profit". *The Bombay Film Laboratories, Ltd. v. The State of Bombay* (3 S.T.D. 73). On a reference to the High Court: *Held*, that although the assessee was carrying on the business of

buying goods on behalf of their customers, they were not carrying on the business of selling the goods to their customers. They were therefore not dealers within the meaning of section 2(c) prior to its amendment by Act X of 1954. [On the question whether a mere activity of selling without any profit motive would bring them within the ambit of the definition of "dealer" and on the question of estoppel, their Lordships did not express any opinion.] (Civil Reference No. 5 of 1955, decided on 26th July, 1955, by CHAGLA, C.J., and DIXIT, J.).

Person need not be declared dealer with respect to every articles.—It is not necessary that a person should be declared a dealer with respect to every article constituting a transaction of sale. As long as he is a dealer in the goods of which the particular article is a part, the turnover of the goods would include the cost of the articles and consequently the aggregate value of the entire transaction would become the turnover. Therefore when an assessee is a dealer in sugar, he is deemed to be doing business or trade in selling sugar in bags, irrespective of whether he is carrying on a business in gunny bags with a view to earn profits.—*NIZAM SUGAR FACTORY LTD. v. COMMISSIONER OF SALES TAX, HYDERABAD* [1957] 8 S.T.C. 61 (Hyd.).

—See also [1967] 19 S.T.C. 1 (S.C.) pages 449-450 *supra*.

Distinction between "dealer" and "registered dealer".—Under the Madras General Sales Tax Act, 1939, there is a distinction between a "dealer" and a "registered dealer". For an offence under section 13 read with section 15(h) the prosecution must prove that the accused is a "registered dealer" within the meaning of the Act. If an assessee has not registered himself under section 8A he may be punishable for that, but not for not maintaining correct accounts which is an obligation cast on registered dealers only.—*THE PUBLIC PROSECUTOR v. KUNCHAM VENKATESWARULU* [1952] 3 S.T.C. 216 (Mad.).

Explanation to definition of "dealer" in Madras Act—Scope of.—The function of the explanation to the definition of "dealer" in section 2(b) is not to effect a fundamental change in the character of the transaction which would be the subject of tax. Firstly, the explanation itself uses the expression "sells" which has a statutory definition. Secondly, it is possible to read the explanation as applying to institutions of the type set out therein, which have a profit motive. For, in the case of a proprietary club, as distinguished from a members' club, it is possible that the proprietor seeks to make a profit by affording social amenities to those resorting to the club. Possibly the explanation was added merely to include occasional

or even casual transactions by the institutions and persons set out therein and to repel in advance any argument that unless there is a continuous series of sales the association dealt with in the explanation would not be liable to pay tax. The explanation however is not sufficient or apt to impose tax liability on transactions of sale unattended with profit motive. *Quære.*—Whether the supply of refreshments by a non-proprietary incorporated club to its members amounts to a sale or not.—*DEPUTY COMMERCIAL TAX OFFICER, TRIPPLICANE DIVISION, & ANOTHER v. THE COSMOPOLITAN CLUB* [1955] 6 S.T.C. 1 (Mad.).

—See also under CLUB, page 259 *supra*.

SPECIAL TOPICS

Advertising firm—Liability to sales tax.—See page 11 *supra*.

Agriculturist—Agriculturist selling produce of his land—Whether dealer.—Tax on the producer on a sale by him cannot be intended to be levied as the person who grows agricultural produce and has incidentally to sell the same cannot be called a person engaged in buying, selling or supplying or distributing goods within the meaning of the definition of dealer. On the other hand, the income from first sale of the produce from his lands would be agricultural income, as opposed to business income, liable to be taxed in exercise of the legislative power conferred by item 46 of List II of Schedule VII of the Constitution.—*PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.).

—See also *KONDURI BUCHI RAJALINGAM v. STATE OF HYDERABAD, AND OTHERS* [1954] 5 S.T.C. 401 (Hyd.); [1958] 9 S.T.C. 397 (S.C.), *GIRDHARILAL JIWANLAL v. THE ASSISTANT COMMISSIONER OF SALES TAX (APPEALS), NAGPUR, AND ANOTHER* [1957] 8 S.T.C. 732 (Bom.) and *SRI KANYAKAPARAMESWARI GINNING AND GROUNDNUT OIL MILL CONTRACTORS COMPANY v. STATE OF MADRAS* [1955] 6 S.T.C. 38 (Mad.).

—An agriculturist merely because he happens to market his crops will not come within the definition of "dealer" in section 2(g) of the Madras General Sales Tax Act, 1959. Nor will he be a dealer because the agricultural produce has been put to some kind of treatment only in order to make it marketable. Whether an agricultural produce has lost its character as such by a process contemplated by explanation (1) to section 2(r) will depend upon the particular facts in each case. It should be examined, on the facts found, how far a processing has brought about a change to the original produce as to alter its character to such an extent so as to justify the conclusion that the produce

after treatment is a different produce and not the same agricultural produce. Where the petitioner claimed that the arecanuts sold by him were not liable to be taxed under the Madras General Sales Tax Act, 1959, on the ground that he was not a dealer and that they were also agricultural produce: *Held*, that the department, as and when the facts were established, should decide (1) whether the petitioner was a dealer, and (2) if so, whether on the materials placed before it the arecanuts marketed by him would not fall within the ambit of the proviso to the definition of turnover in section 2(r).—N. DEVIAS GOWDER *v.* COMMERCIAL TAX OFFICER, COIMBATORE [1962] 13 S.T.C. 422 (Mad.).

—*Agriculturist converting sugarcane into gur—Whether dealer.*—In the absence of any indication to the contrary suggesting that the agricultural produce must be sold in the form in which it is grown, there will be justification in holding that an agriculturist who is exclusively selling agricultural produce grown on his land either in the form in which it is grown or in the form in which it is converted for the purpose of transportation or preventing deterioration is within the exception provided by section 2(6) of the Bombay Sales Tax Act, 1953. Where the assessee, an agriculturist, with a view to prevent deterioration and for the purpose of facilitating transportation, converted the sugarcane grown by him in his land into gur and sold it: *Held*, that the assessee came within the exception provided by section 2(6) and therefore could not be regarded as a dealer.—R.B.N.S. BORAWAKE *v.* THE STATE OF BOMBAY [1960] 11 S.T.C. 8 (Bom.).

—*Grower of rubber trees collecting latex, converting it into rubber sheets and selling them—Whether dealer.*—The mere sale by a person of rubber sheets produced by conversion of latex collected from rubber trees grown by him, is not sufficient to constitute him a "dealer" within the meaning of section 2(d) of the General Sales Tax Act, 1925, inasmuch as he cannot be said to carry on the business of selling goods. The conversion of latex into rubber sheets is but a process, the minimum process to render the produce marketable. The exclusion of rubber from the definition of agricultural or horticultural produce in section 2(a) of the Act does not impinge on the definition of "dealer" in section 2(d), as the emphasis in it is on the business of selling and not on the nature of the produce sold.—MUHAMMED AND OTHERS *v.* SALES TAX OFFICER, KOZHIODE, AND ANOTHER [1962] 13 S.T.C. 54 (Ker.).

—*Rubber company converting latex into sheets and selling them—Whether dealer.*—An agriculturist

selling his own produce either as gathered or after subjecting it to the minimum requirements necessary for transport and marketing cannot be considered to be a person engaged in the business of selling. The sale which he effects is only the culmination of his agricultural operations; it is not separate and distinct from his agricultural avocation; and he cannot be considered to be a person carrying on a business of selling simply because he effects a sale of his own agricultural produce. Where what all a company growing rubber trees did was to convert the latex tapped from its rubber trees into sheets and effect sales of those sheets to its customers, the company was not a dealer within the meaning of section 2(b) of the Central Sales Tax Act, 1956, inasmuch as the conversion was not a manufacturing process but a process essential for the transport and marketing of rubber.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON *v.* TRAVANCORE RUBBER AND TEA CO., LTD., [1964] 15 S.T.C. 615 (Ker.) affirmed in [1967] 20 S.T.C. 520 (S.C.).

—Where the only facts that were established were that the assessee converted the latex tapped from its rubber trees into sheets and effected a sale of those sheets to its customers and that the conversion of latex into sheets was a process essential for the transport and marketing of the produce: *Held* that the onus of proving that the assessee was carrying on business and was, therefore, a "dealer" within the meaning of section 2(b) of the Central Sales Tax Act, 1956, was on the department and that the department had not discharged that onus.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON *v.* TRAVANCORE RUBBER AND TEA CO. [1967] 20 S.T.C. 520 (S.C.).

—Where cotton sold was grown on lands of the assessee by personal cultivation through servants, the assessee came within the exception of the definition of the term "dealer" in section 2(11) of the Bombay Sales Tax Act, 1959.—THE STATE OF GUJARAT *v.* SHRI SURAT PANJARAPOLE [1969] 23 S.T.C. 57 (Guj.).

—Where a person sells the produce from his land whether produced therein by agricultural operations or what grows there spontaneously, there is no element of any business involved and, therefore, he cannot be said to be a dealer.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX *v.* MAMU HAJI AND OTHERS [1967] 19 S.T.C. 45 (Ker.).

—See also RAJA VISHESHWAR *v.* PROVINCE OF BIHAR [1951] 2 S.T.C. 129 (Pat.).

Artist—Whether dealer—See pages 78-79.

—*Supply of paintings for cinema producers for advertisement—Liability to sales tax.*—The assessee undertook to do paintings mostly for cinema producers for the purpose of advertisement. The department excluded from the assessee's assessable turnover those cases where he had painted on boards supplied by the customers. The question was whether the assessee could be assessed to tax on the turnover representing paintings where he had painted on boards supplied by him for the customers: *Held*, that in drawing such paintings art and skill were involved and the customers sought the services of the assessee principally for his art and skill. The bargain was primarily for work and labour and the transfer of property in the shape of boards was only ancillary to the main contract. The turnover was therefore not liable to sales tax.—*P. BALAKRISHNA MUDALIAR v. THE STATE OF MADRAS* [1965] 16 S.T.C. 825 (Mad.).

Association—Member of association—Liability for tax due from association—Tax due from District Refugee Cloth Merchants Syndicate—Whether can be recovered from members.—Under the Explanation to sub-section (d) of section 2 of the Patiala and East Punjab States Union General Sales Tax Ordinance, 2006 Bk., any association which sold or supplied goods to its members would be a "dealer". Where the assessee was a syndicate supplying goods to its members, tax due from the syndicate could be recovered from the partner or partners of the syndicate under rule 39(1) of the Patiala and East Punjab States Union General Sales Tax Rules, 2006 Bk. But in order to make a person liable as partner for the tax due from the syndicate, it was necessary for the authorities to record a finding that he was a partner in the syndicate. The Government supplied cloth to the assessee, the District Refugee Cloth Merchants Syndicate, Barnala District, which in turn supplied it to other associations who were members of the syndicate. The associations paid commission to the syndicate on such supplies of cloth. The entire profits earned by the syndicate on the supplies of cloth belonged exclusively to it and were not shared by other associations who, in their own turn, made profits on the cloth supplied to them: *Held*, that the assessee-syndicate was the dealer and that the associations could not be deemed to be partners of the syndicate but were distinct entities for all purposes except for only one, namely, that the syndicate could supply cloth only to the associations, which were its members, and not to any one else.—*RAMESHWAR DASS v. THE EXCISE AND TAXATION COMMISSIONER, PEPSU, PATIALA, AND OTHERS* [1959] 10 S.T.C. 218 (Punj.).

—Arrears of tax due from association registered under Societies Registration Act—Attachment of private property of President—Legality.—See page 66 *supra*.

—*Madras Bakery Association—Distribution of maida to members—Whether association dealer.*—The Madras Bakery Association, which was registered under Act 21 of 1860, had as its object, among others, to make necessary arrangements to obtain maida, sugar and other requirements for the bakeries, who were members of the association, for the manufacture of bread, buns, cakes, biscuits and other confectionaries. The Deputy Director (Rationing) permitted the association to draw the quota of its members from three flour mills, and the association was directed to pay the value of the allotment of its members per month in the form of demand drafts drawn in favour of the Deputy Director (Civil Supplies) and obtain necessary delivery orders on any of the three flour mills. The association was also permitted to draw the commodities sanctioned to its members at wholesale issue price. The question was whether the association was a dealer liable to sales tax under the Madras General Sales Tax Act, 1959, in respect of the distribution of maida to its members: *Held*, that the activity in which the association was engaged could not be said to be "business" and it could not be included within the term "dealer" under the Act and, therefore, it was not liable to sales tax.—*THE MADRAS BAKERY ASSOCIATION v. THE DEPUTY COMMERCIAL TAX OFFICER, AYANAVARAM DIVISION, MADRAS-10, AND ANOTHER* [1967] 20 S.T.C. 282 (Mad.).

—See also CLUB page 259 *supra* and FIRM *infra*.

Auctioneer—Whether dealer—Whether liable to sales tax—Definition of dealer which includes auctioneer—Validity.—See AUCTIONEER page 97 *supra*.

—Auction of confiscated goods by customs department of Government of India—Whether customs department "dealer".—*CALCUTTA DYEING AND BLEACHING WORKS, MADRAS v. THE STATE OF MADRAS* [1964] 15 S.T.C. 812 (Mad.).

Broker—Whether dealer.—See page 153 *supra*.

Building contractor—Whether sale value of broken bricks, jelly and cement left over after completion of building contracts liable to tax.—The assessee was building contractors. They objected to the inclusion in their turnover the sale value of materials such as broken bricks, jelly and cement left over after the completion of the building contracts executed by them on the ground that they were not dealers in those materials and that the sales of those materials

were only incidental to the carrying on of the contract work: *Held*, (1) that notwithstanding that the assessee engaged themselves in the business of building contracts and that the transfer of property in the materials used by them in the execution of the building contracts did not represent a "sale" within the meaning of the Madras General Sales Tax Act, 1959, the assessee was dealer and came within the scope of the definition of "dealer" in the Act; (2) that as the necessity of disposal of the surplus materials was ingrained in the very nature of the business which the assessee carried on and they had to effect sales of such surplus materials, the assessee could be regarded as dealer selling goods in the course of their business; (3) that it is not necessary to discern the profit motive in respect of each and every part of the business carried on by a dealer; the profit motive necessary to be examined is one which embraces the whole business of the dealer and not in respect of each one of the component parts of the business; (4) that the sale value of the materials could therefore be included in the assessee's turnover. *State of Mysore v. The Bangalore Woollen, Cotton and Silk Mills Company Ltd.* [1962] (13 S.T.C. 106) dissented from. *Deputy Commissioner of Commercial Taxes, Coimbatore Division v. Sri Lakshmi Saraswathi Motor Service, Gudiyattam* [1954] (5 S.T.C. 128) distinguished.—GANNON DUNKERLEY AND COMPANY (MADRAS) PRIVATE LIMITED *v.* THE GOVERNMENT OF MADRAS [1964] 15 S.T.C. 40 (Mad.).

—No turnover of sales—Purchase of building materials from unregistered dealers for execution of contract works—Liability to pay purchase tax under section 7, Madhya Pradesh Act.—GANESH PRASAD DIXIT *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1966] 17 S.T.C. 14 (M.P.).

—See also page 155 *supra*.

Bus operators—*Sale of unserviceable and useless buses.*—Certain motor transport companies carrying on the only business of providing transport sold buses as and when they became unserviceable or useless: *Held*, that by reason of these isolated transactions they could not be treated as dealers in buses within the meaning of the Madras General Sales Tax Act, 1939. Unless it was established that they were dealers, the application of the remaining provisions of the Act did not arise.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE DIVISION *v.* SRI LAKSHMI SARASWATHI MOTOR SERVICE, GUDIYATTAM [1954] 5 S.T.C. 128 (Mad.).

—*Sale of unserviceable motor vehicles and used tyres and tubes*—Liability to sales tax.—The assessee

carrying on the business of providing transport, and operating buses sold unserviceable cars, trucks, tyres and other used motor accessories to various persons. On the question whether the assessee was a dealer and liable to sales tax: *Held*, that the assessee's sales of unserviceable vehicles and motor accessories were not sales by a dealer in the course of business of selling or supplying these goods and the sales were therefore not liable to sales tax. *Aryodaya Spinning and Weaving Company Limited v. The State of Bombay* [1960] (11 S.T.C. 141) distinguished. *State of M.P. v. Bengal Nagpur Cotton Mills Ltd.* [1961] (12 S.T.C. 333) followed.—COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE *v.* RAM DULARE BALKISHAN AND BROS. [1963] 14 S.T.C. 202 (M.P.).

—The business of providing transport services, or, for that matter, services of any other kind is not a business for the carrying on of which a dealer has to be registered under the C.P. and Berar Sales Tax Act, considering that section 2(c) of the Act restricts the definition of "dealer" to person carrying on the business of selling or supplying goods.—H. S. KAMATH, PRESIDENT in *ONKARMAL JODHRAJ AGARWAL v. THE STATE* [1952] 3 S.T.C. 313 at p. 314.

Business of bailing and pressing cotton—Person carrying on such business—Whether dealer.—See PACKING MATERIALS.

Canteen maintained by factories—Supply of lunch and tiffin to members.—See (1) SREE MEENAKSHI MILLS LTD. *v.* THE STATE OF MADRAS [1954] 5 S.T.C. 291 (Mad.).

(2) DAVANGERE COTTON MILLS LTD. *v.* STATE OF MYSORE, AND ANOTHER [1957] 8 S.T.C. 793 (Mys.).

(3) CHAIRMAN, COMMITTEE OF MANAGEMENT, INTEGRAL COACH FACTORY CANTEEN, MADRAS *v.* DEPUTY COMMERCIAL TAX OFFICER, PERAMBUR DIVISION [1962] 13 S.T.C. 827 (Mad.).

(4) SWADESHI COTTON MILLS COMPANY LTD. *v.* SALES TAX OFFICER, SPECIAL INVESTIGATION BRANCH, KANPUR, AND ANOTHER [1964] 15 S.T.C. 505 (All.).

—The assessee, the Madras Electricity Department Canteen, was formed with the main object and purpose of serving the members of the canteen with lunch and tiffin. There was however no prohibition in the bye-laws governing the canteen to sell lunch and tiffin to non-members. During the year of assessment the assessee sold lunch and tiffin to outsiders and earned a profit: *Held*, that the transactions of the canteen were "sales" within the meaning of the Madras General Sales Tax Act, 1939, and the assessee

was therefore liable to sales tax. Catering to persons who were not members of the canteen necessarily implied that the canteen had a business or a profit motive. *State of Bombay v. Ahmedabad Education Society* [1956] (7 S.T.C. 497) distinguished.—*MADRAS ELECTRICITY DEPARTMENT CANTEEN, MADRAS v. THE STATE OF MADRAS* [1962] 13 S.T.C. 288 (Mad.). See also the following cases :

—Section 9 of the Madras General Sales Tax (Second Amendment) Act (15 of 1964) has validated the levy of tax on the sales effected in 1959-60 in the canteen run by the Southern Railway Workshop for its workers on a non-profit basis under the provisions of the Factories Act, 1948.—*SOUTHERN RAILWAY EMPLOYEES' WORKSHOP CANTEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUCHIRAPALLI TOWN IV, AND ANOTHER* [1965] 16 S.T.C. 187 (Mad.).

(1) *THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, MADRAS-7 v. CARRIAGE WORKS CANTEEN SOUTHERN RAILWAY, PERAMBUR* [1963] 14 S.T.C. 654 (Mad.),

(2) *SOUTHERN RAILWAY CO-OPERATIVE CANTEEN LTD. v. COMMERCIAL TAX OFFICER, II CIRCLE, MYSORE CITY* [1967] 20 S.T.C. 96 (Mys.).

Casual sale of assets of business—The applicants, a company registered as dealers under the Bombay Sales Tax Act, sold a motor car, which was purchased by them for the use of their managing director. The cost of the purchase and the proceeds of sale of the motor car were debited and credited in the company's books of account. The car was actually shown as part of the assets of the company and it was sold at a profit : *Held*, that the sale of the car was liable to sales tax. *Login Dawlat Corporation Ltd. v. The State of Bombay* (3 S.T.D. 78) followed.—*STEELAGE INDUSTRIES LTD. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 493. The High Court reversed this decision. See below :

—Under the provisions of section 5 read with section 2, clauses (c) and (j), of the Bombay Sales Tax Act, 1946, only those transactions, which were carried out as part of the business of the dealer, are liable to be taxed under the Act. If the sale is a casual sale having no connection with the business for which the dealer is registered or is liable to be registered, the sale price will not be liable to be included in the taxable turnover nor will the price liable to be taxed. In order to regard a transaction a part of a business, the test of volume and the degree of frequency of similar transactions must be fulfilled ; and the fact that there has been a casual

sale of a single item of the assets of the assessee does not make the sale a part of the business of the assessee. The assessee was a company carrying on the business of manufacturing and selling steel furniture and they were registered as dealers under the Bombay Sales Tax Act. In the application submitted by them for registration as dealers, sale in motor cars was not mentioned as one of the lines in which they were dealing or intended to deal. The assessee sold a motor car, which was purchased by them for the use of their managing director, after its usage for more than three years. The cost of purchase and the proceeds of sale of the motor car were credited and debited in the assessee's books of account. The car was actually shown as part of the assessee's assets and it was sold at a profit : *Held*, that the assessee was not liable to sales tax in respect of the resale of the car. *Steelage Industries Ltd. v. State of Bombay* [1956] (7 S.T.C. 493) reversed.—*STEELAGE INDUSTRIES LTD. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 376 (Bom.).

—The definition of "dealer" in the Bihar Sales Tax Act, 1947, as amended by the Bihar Finance Act, 1950, still means any person who sells or supplies any goods in connection with his business and therefore a casual sale of machineries by a dealer in coal is not liable to be included in the turnover of the dealer.—*COMMISSIONER OF SALES TAX, BIHAR v. BASTA COLLA COLLIERY CO. LTD.* [1968] 21 S.T.C. 454 (Pat.).

—See also cases digested under **FIXED ASSETS, SECOND-HAND GOODS** (*infra*).

Charitable institution—Institution to preserve lives of stray cattle and other stray animals—Sale of cotton grown on its lands, carcasses of animals, milk and dung—Whether institution dealer and liable to sales tax.—*THE STATE OF GUJARAT v. SHRI SURAT PANJARAPOLE* [1969] 23 S.T.C. 57 (Guj.).

Commission agent—Whether dealer.—Commission agents who are merely brokers who bring the buyers and sellers together and establish privity of contract between them are not dealers within the meaning of the Act and are therefore not liable to sales tax. If however the commission agents are entrusted with the custody or dominion over the goods by the sellers with authority to transfer the property therein to the purchasers, they would be dealers and would be liable to sales tax. The question whether on the facts established, the commission agents are mere brokers or agents with authority to transfer property in goods is a question of law. The nature of the transactions carried on by the

plaintiff who was described as a *dallali* merchant (commission agent) was as follows:—The ryots brought their goods in bags to the plaintiff's shop and unloaded them in front of the shop. Certain marks were then placed upon the bags for identification. The plaintiff then sent for the prospective buyers or sometimes the buyers came of their own accord. The purchasers or their representatives inspected the goods and if the prices fixed after discussion between the parties, were acceptable to the ryots then the sales would take place. After settlement of price the goods were weighed in the presence of the ryots, the purchasers and the plaintiff and the weightments were entered in "chintalu" books. The plaintiff issued both to the ryots and to the purchasers pattis or lists made out in his own name. The purchasers then carted the goods away from the shop of the plaintiff. The price was collected from the purchasers by the plaintiff either the same day or sometime later and paid over to the ryots. The plaintiff got a commission from both the purchasers and the ryots. On the question whether the plaintiff was a dealer liable to sales tax under the Madras General Sales Tax Act, 1939: *Held*, that the sale took place in the presence of the selling ryots and the purchasers and every element in the completion of the contract of sale was settled and decided after discussion between the parties to the contract of sale, the plaintiff merely assisting in bringing the two parties together and completing the bargain. The plaintiff was therefore in the position of a mere broker and he was therefore not liable to sales tax. The essence of the matter is the presence of both the parties at the time of the completion of the bargain.—N. AYYANNA SETTY & SONS AND OTHERS v. STATE OF MYSORE [1961] 12 S.T.C. 731 at 732 (Mys.).

—*Assessee carrying on independent business of selling textile goods also selling goods of Government Handloom Textile Marketing Organization—Whether dealer.*—The expression "dealer" in section 2(c) of the Orissa Sales Tax Act, 1947, will not include a manager or an ordinary agent of a dealer if the dealer himself resides in Orissa. Thus, those classes of agents whose duties are akin to those of mere employees carrying on the principal's business of selling goods will not come within the definition of the expression "dealer". Commission agents or mercantile agents may well come within the definition clause because though they may be selling goods of other persons, nevertheless, the business of selling is their own and they have full authority to transfer title to third parties without disclosing the name of the principal. The assessee carrying

on an independent business of selling textile goods was registered as a dealer under the Orissa Sales Tax Act, 1947. The assessee was also selling the goods of the Government Handloom Textile Marketing Organization. The goods of the organization, with the prices marked thereon, were sent to the assessee who sold them for the same price to his customers using the cash memos supplied by the organization. The assessee removed the labels of the organization on the goods and affixed his own labels describing himself as "Lakshmi House, agent of the Textile Marketing Organization". The sale price was remitted to the organization at intervals, and the goods, stocked in the shop of the assessee, were periodically inspected by an official of that organization. The assessee was given 5 per cent. commission on the total sales effected by him on behalf of the organization and this commission included the actual expenses incurred by him towards house rent, lighting charges, etc., for that portion of the shop where the goods of the organization were stocked and sold. The question was whether the assessee was liable to pay sales tax for the period 1st April, 1951, to 31st March, 1956, in respect of the sales of the goods of the organization: *Held*, that in selling the goods of the organization the assessee was not carrying on his own business, but the business of the organization. His position was somewhat akin to that of an ordinary agent or employee who was remunerated on a commission basis. The assessee was therefore not a "dealer" and was not liable to pay sales tax. *Mahadayal Premchandra v. Commercial Tax Officer, Calcutta* [1958] (9 S.T.C. 428) distinguished. *Kishenchand Tolaram v. A. B. Ghanekar* [1961] (12 S.T.C. 562) followed.—COMMISSIONER OF SALES TAX v. K. C. MOHAPATRA [1962] 13 S.T.C. 412 (Ori.).

—See also page 269 *supra*.

Confiscated goods—Auction of confiscated goods by customs department of Government of India—Whether customs department "dealer".—*CALCUTTA DYEING AND BLEACHING WORKS, MADRAS v. THE STATE OF MADRAS* [1964] 15 S.T.C. 812 (Mad.).

Contractor supplying dehydrated meat to Government—*Whether dealer.*—The assessee-company entered into a contract with the Government of India for the supply of dehydrated meat. According to the terms of the contract the plant and machineries were provided to it by the Government and dressed goat-meat was supplied to it by another contractor at a price fixed by Government. The assessee had to pay for the dressed meat and

was entitled to receive payment from the Government according to a fixed scale for the dehydrated meat. The assessee entered into a deed of partnership with other parties for the production of dehydrated meat in the factory but the assessee was responsible to the Government for the supply of the product. The assessee started the business of manufacturing the product in April, 1944, but it had been registered for the year 1943-44 under the Bihar Sales Tax Act for a separate business which it carried on at Ranchi. The assessee supplied the dehydrated meat in sealed containers to the military authorities but did not charge separately for the cost of materials supplied in preparing the product and the labour involved in manufacturing it. The assessee was assessed to sales tax for the period from 1st October, 1944, to 31st March, 1945, on a certain turnover. It was contended (1) that the assessee was not a "dealer", (2) that there was no sale, and (3) that the assessee was not chargeable under section 4(2) of the Bihar Sales Tax Act, 1947, for the period 1st October, 1944, to 31st March, 1945, inasmuch as this business was commenced only in April, 1944: *Held*, (i) that the assessee was a dealer within the meaning of section 2(c) of the Act; (ii) that there was a transfer of property for valuable consideration and there was therefore a "sale" within the meaning of section 2(g) of the Act; (iii) that the liability upon the assessee was imposed not under section 4(2) but under section 4(1), and for section 4(1) to operate it was not necessary that the business which the assessee carried on in 1943-44 should be the same business of dehydrated meat which was started in 1944-45; (iv) that the assessee was therefore liable under section 4(1) read with section 2(c) of the Act to pay sales tax in respect of the two quarters; (v) that, on the facts of the case, the assessee was not liable to any penalty for failure to register as a "dealer".—*MOHAMMAD AMIN BROTHERS LTD. v. THE PROVINCE OF BIHAR* [1951] 2 S.T.C. 55 (Pat.).

Co-operative society distributing goods to members—Whether dealer.—See page 422 *supra*.

Customs department of Government of India—Purchase of goods by dealer at auction of confiscated goods by customs department and subsequent sale—Whether customs department "dealer"—The Customs Department which comes into possession of confiscated goods from time to time and periodically sells them in auction is not engaged in trade, commerce or manufacture or adventure in the nature of trade, commerce or manufacture and does not come within the definition of

"dealer" in section 2(g) of the Madras General Sales Tax Act, 1959. Therefore a sale by a dealer of goods purchased at the auction of confiscated goods held by the Customs Department will be the first sale by a dealer. *Fiaz Ahmed & Co. v. The State of Madras* [1964] (15 S.T.C. 201) referred to.—*CALCUTTA DYEING AND BLEACHING WORKS, MADRAS v. THE STATE OF MADRAS* [1964] 15 S.T.C. 812 (Mad.).

Dairy—Dealer in dairy products—Annual sales of dry cattle—Whether sales of dry cattle liable to sales tax.—The assessee-firm registered as a dealer in dairy products sold away a part of its live-stock annually and replaced the same by fresh yielding stock. The question arose whether the proceeds of such sales were to be treated as part of the turnover of the assessee liable to sales tax: *Held*, that the frequency, regularity and the volume of sales of cattle by the assessee were such that they could be regarded as "an activity in the course of the business of the assessee" and therefore the assessee's sales of cattle were part of its business, constituting it a dealer within the meaning of the Sales Tax Act, and attracted liability to taxation in respect thereof.—*GOSRI DAIRY, VYTILA v. THE STATE OF KERALA* [1961] 12 S.T.C. 683 (Ker.) (F.B.).

Director of Supplies and Disposals—Whether dealer and liable to sales tax.—*DIRECTOR OF SUPPLIES AND DISPOSALS v. MEMBER, BOARD OF REVENUE, WEST BENGAL, CALCUTTA* [1965] (16 S.T.C. 197) (Cal.) reversed by the Supreme Court in [1967] 20 S.T.C. 398.

Distributor of oil company—Invoices for goods supplied prepared in distributor's name—Distributor liable for price of goods sold—Whether distributor dealer.—Under section 2(c) of the Madhya Pradesh Sales Tax Act, 1947, the person sought to be taxed must carry on the business of selling goods whether as principal or as agent. The tax cannot be imposed unless the assessee can be said to have carried on the business of selling the goods whether as principal or as agent. Under an agreement the assessee was appointed by a company as its distributor for selling its goods in certain districts. The agreement provided that the company would sell the goods to the assessee at the prices fixed by the company and the assessee would sell the goods to his customers on his own responsibility. The selling price of the assessee to his customers had to be fixed by mutual agreement from time to time, but if there was no agreement then it should not exceed 20 per cent. of the company's selling price. Clause 4 of the agreement was as follows:—"The distributor shall countersign all orders from his

customers in token of the distributor's responsibility and liability to the company for the price thereof as also in token of the correctness in quality, quantity and specification thereof. The company shall not be responsible or liable in respect to any mistakes or errors in the said orders. The relative railway receipts or bills of lading will be sent to the distributor through the company's bankers unless otherwise mutually agreed. Invoices will be made out by the company in the name of the distributor and submitted to the distributor who shall be responsible for payments to the company for all orders accepted by him. All sales by the distributor will be made by him as goods belonging to, manufactured, or imported by the company and the company retains all its proprietary marks, labels and designs and the distributor shall do nothing to lower the reputation or the value thereof in the market. The company however reserves the right in its sole discretion and without advancing reasons to refuse to execute any orders." The taxing authorities found that all orders had been countersigned by the assessee and that the assessee had also filed suits against some customers for recovery of the price of the goods. The assessee contended that he was not liable to pay any sales tax on the transactions as by virtue of clause 4 of the agreement he was only a guarantee-broker and not a dealer within the meaning of section 2(c) of the Madhya Pradesh Sales Tax Act, 1947: *Held*, (1) that the question whether the assessee was or was not a guarantee-broker or a dealer depended on the legal effect of the findings reached by the Sales Tax Authorities and on the construction of the terms of the agreement and therefore the question was clearly a question of law; (2) that the assessee bought the goods from the company and sold them to his customers at prices fixed according to the special provision in the agreement and he was therefore a dealer within the meaning of section 2(c) of the Act and was liable to pay sales tax on the transactions. *C. P. Coal Trading and Distributing Co. v. Commissioner of Sales Tax, M.P., and Another* [1954] (5 S.T.C. 208), *Govind-prasad Gour v. Commissioner of Sales Tax (M. C. C. No. 210 of 1952)* and *Mahadayal Premchandra v. Commercial Tax Officer, Calcutta* [1958] (9 S.T.C. 428) distinguished.—*THE STATE OF MADHYA PRADESH v. SHRI DAYARAM RATHOD* [1961] 12 S.T.C. 572 (M.P.).

—See also *DISTRIBUTOR infra*.

Dyer—*Whether dealer*.—When a dyer dyes the yarn brought to him by a customer and hands it back to him on payment of certain charges no sale takes place. Such a transaction is a contract of work and not a contract of sale. The dyer is

not a dealer and his registration as a dealer, in so far as his business of dyeing is concerned, is not in order. Cancellation of the registration certificate given to him would automatically make taxable the sales made to him of dyeing materials. *Rajasthan Printing and Litho Works Ltd. v. The State* [1952] (3 S.T.C. 62; 1951 N.L.J. 613) applied.—*CHAUTHMAL CHAMPALAL OF NAGPUR v. THE STATE* [1952] 3 S.T.C. 245.

—See also *DYEING*.

Fair price shop—Where the assessee, a limited liability company manufacturing cotton yarn, in order to provide amenity to its workmen, had opened a fair price shop so that commodities might be made available to the workmen at fair prices, the assessee could not be said to be carrying on the business of selling commodities in the fair price shop in a trade or commercial sense even if profit accrued to it and, therefore, it was not, with reference to the fair price shop, a dealer within the meaning of the Madras General Sales Tax Act (1 of 1959 as amended by Act 15 of 1964).—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, COIMBATORE DIVISION, COIMBATORE v. SRI THIRUMAGAL MILLS LTD.* [1967] 20 S.T.C. 287 (Mad.).

Film producers—Pictures produced not sold but were given for exhibition under certain financial arrangements—Purchase of raw films by producers—Whether producers dealers.—*K. S. FILMS v. THE STATE OF MAHARASHTRA* [1969] 23 S.T.C. 121 (Bom.).

—*Distributor and producer of films*—*Supply of posters and publicity materials to producers*—*Entries in the accounts*—*Whether transaction sale*—*Whether distributor "dealer"*—*Liability to sales tax*.—The petitioner-company who, in addition to being distributors of films produced by others, produced its own films. It got huge stocks of publicity materials printed, and supplied them to the producers at a cost which included the printing charges paid by it to the printing press inclusive of sales tax thereon, as also five to fifteen per cent. called handling charges. The question was whether the petitioner was liable to pay sales tax on these transactions: *Held*, that, on the facts and circumstances of the case, the transactions constituted sales within the meaning of section 2(n) of the Andhra Pradesh General Sales Tax Act, 1957, and that as the petitioner fell within the definition of a "dealer" in section 2(e), the transactions were liable to be taxed.—*RAJSHRI PICTURES PRIVATE LTD. v. THE STATE OF ANDHRA PRADESH* [1965] 16 S.T.C. 348 (A.P.).

—*Dealer in cinematographic goods*—*Sale of used projector and negative of film after using it for some*

years—Liability to sales tax.—The assessee was a dealer in cinematographic goods. In the course of his business, the assessee used to purchase from abroad film projectors and sell them. He also used to take educational films and exhibit them for remuneration in schools and other institutions with the help of some of his projectors. As there was a market for the positives of such films taken by him, he used to sell the positives and retain the negatives for some years. The question was whether the sales by the assessee in the year of assessment, of a cinema projector used for some years and the negative of the film "Tour of Mahatma Gandhi" taken by him before several years were liable to sales tax. The assessee contended that these sales were not in the course of his business and were not liable to sales tax: *Held*, that the essential ingredients of sale in the course of the business activity existed in respect of these transactions and they were therefore liable to sales tax.—*PROJECTION OF INDIA PICTURES v. THE STATE OF MADRAS* [1965] 16 S.T.C. 357 (Mad.).

—See also *A. V. MEIYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES* [1967] 20 S.T.C. 115 (Mad.).

Financier—Assessee financing buyers and sellers and charging commission and interest—Whether sale by a dealer.—The essence of the definition of dealer in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, is that the dealer himself should be selling or supplying goods. Where in respect of certain coal business the Board of Revenue found from the assessee's account books that the transactions amounted merely to financing the buyers and sellers on an agreement to charge commission and interest and that none of the dealings were entered into by the assessee himself: *Held*, that the transactions did not amount to sales by a dealer within the meaning of section 2(c) of the Act.—*MOTILAL HAZARIMAL v. STATE OF MADHYA PRADESH* [1960] 11 S.T.C. 316 (M.P.).

Firm—Whether dealer.—See *FIRM infra*.

—Partner of firm—Whether dealer.—See *FIRM infra*.

Fixed assets—Sale by company.—Where a person in the course of carrying on a business is required to dispose of what may be called his fixed assets or his discarded goods acquired in the course of the business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise.—*THE STATE OF GUJARAT v. RAIPUR MANUFACTURING CO. LTD.* [1967] 19 S.T.C. 1 (S.C.).

—Company manufacturing and selling machinery and parts of machinery and accessories—Arc furnaces imported for foundry found unsuitable and sold later at profit—Sale price whether should be included in turnover.—*THE STATE OF MADRAS v. K.C.P. LTD.* [1969] 23 S.T.C. 173 (S.C.) affirming [1965] 16 S.T.C. 165 (Mad.).

—Company carrying on business of manufacture and sale of chemicals—Liability to sales tax on sale of machinery.—*THE MINING AND CHEMICAL INDUSTRIES v. COMMISSIONER OF SALES TAX, UTTAR PRADESH* [1963] 14 S.T.C. 391 (All.).

—Sale of old machinery and replacement by new one.—*COMMISSIONER OF SALES TAX v. HINDOOSTAN SPINNING AND WEAVING COMPANY LIMITED* [1964] 15 S.T.C. 69 (Mah.).

Government—Government department purchasing and selling essential commodities for the benefit of people—Whether carries on business—Whether a dealer.—*NAGAU SAHAR KENDRIYA SAHAKARI KAR VIKRAYA SANGH AND ANOTHER v. THE STATE OF RAJASTHAN AND OTHERS* [1968] 21 S.T.C. 114 (Raj.).

—Auction of confiscated goods by customs department of Government of India—Whether customs department "dealer".—*CALCUTTA DYEING AND BLEACHING WORKS v. THE STATE OF MADRAS* [1964] 15 S.T.C. 812 (Mad.).

—Director of Supplies and Disposals—Whether dealer and liable to sales tax.—See [1965] (16 S.T.C. 197) (Cal.) reversed by the Supreme Court in [1967] 20 S.T.C. 398.

Hindu undivided family—Family carrying on business at one place starting business at another place under different name—Whether family dealer at both places.—*MIRZAMUL PRABHU DAYAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 508 (Pat.).

—In the case of a Hindu joint family, which is a dealer under the Mysore Sales Tax Act, 1948, its members are the real dealers and at the stage of assessment, whether the family exists without there being disruption of the family status or whether a partition has taken place in that family, it is within the competence of the Commercial Tax Officer to make an assessment under section 12. In both cases, he would have the power to make an assessment upon the family as if it still exists and if he does so, he does no more than to give effect to the provisions of section 3 under which the family and its members are all liable to pay the tax in respect of the the turnover referred to in it, and the quondam members would also be liable to pay the tax determined. The same would be the position even when the collection of the tax has to be made under

section 13. What the words "carries on" in section 2(d) of the Act signify is that the dealer should have been carrying on the business of buying or selling goods during the period referable to the relevant assessment year and not that he should be carrying on such business even at the time when the assessment is made. Under the Mysore Sales Tax Act, 1948, a Hindu joint family is not recognised by its provisions as a distinct unit, apart from its members, which can be assessed as a dealer. The Act makes no distinction between a Hindu joint family and the group of members comprising it. For the purposes of the Sales Tax Act the unit which constitutes the dealer and upon whom an assessment may be made is that collection of persons who form the Hindu joint family and who engaged themselves in the family business of buying and selling goods. Although for the purposes of the Hindu law, that collection of persons is a Hindu joint family with peculiar legal incidents, those incidents for the purposes of the Sales Tax Act can have little relevance. Rule 43 of the rules framed under the Mysore Sales Tax Act, 1957, does no more than merely declare what all along was the correct legal position in the case of Hindu joint families. *Commissioner of Income-tax v. Ellis C. Reid* (A.I.R. 1931 Bom. 335) referred to.—*K. S. SUBBARAYAPPA AND SONS v. COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR* [1962] 13 S.T.C. 571 (Mys.).

—*Separate business or joint family business—Presumption.*—Where the assessee and his son were members of a joint Hindu family, there is no presumption that the business carried on by the son is the joint family business. The question whether the business is the separate business of the son or the business of the joint family will depend on the facts and circumstances of each case.—*SRI GOPAL SRINIVASA SHENOY v. THE STATE OF MYSORE* [1968] 21 S.T.C. 483 (Mys.).

Indian Coffee Board—Whether dealer.—The Indian Coffee Board, which derives its existence from the Coffee Market Expansion Act (VII of 1942) is a dealer within the meaning of section 2(b) of the Madras General Sales Tax Act, 1939, and is therefore liable to sales tax on its turnover. The Board is not a constituted representative of the producer and it does not hold the goods on behalf of the producer. After the goods enter the pool after delivery they become the absolute property of the Board and the producer, a registered owner, has no right or claim to the goods except to share in the sale proceeds after the goods are sold in accordance with the provisions of the Act. The function of the Board and its legal position are those of a

seller of goods which are owned by it and which are vested in it absolutely. The word "business" in the definition of "dealer" is used in the commercial sense, an integral part of which is the motive to make profit by sales or purchases, but the profit need not necessarily accrue to the dealer who carries on the business of buying or selling goods as in the case of commission agents. The board, when it sells the coffee of the pool, does aim to make a profit though not for itself.—*THE INDIAN COFFEE BOARD, BATLAGUNDU v. THE STATE OF MADRAS* [1954] 5 S.T.C. 292 (Mad.).

—The Indian Coffee Board is a dealer within the meaning of section 2(b) of the Madras General Sales Tax Act, 1939.—*THE INDIAN COFFEE BOARD, BATLAGUNDU v. STATE OF MADRAS* [1956] 7 S.T.C. 135 (Mad.).

Legal representative—Whether son liable under 1953 Act in respect of business conducted by his deceased father—Whether section 26(1) applies to transfers by devolution of law or succession.—The legal representative of a deceased person does not fall within the definition of "dealer" contained in section 2(6) of the Bombay Sales Tax Act, 1953. No assessment proceedings can be initiated against a person as the legal representative of the deceased, in the absence of any specific statutory provision in that behalf. Under the Bombay Sales Tax Act, 1953, there is no such statutory provision and, therefore, in respect of the business carried on by a person, his son could not be held liable to tax as his legal heir. Section 26(1) of the Bombay Sales Tax Act, 1953, is intended only to apply to cases of voluntary transfers *inter vivos* and not to transfers by devolution of law or succession. *Ellis C. Reid v. Commissioner of Income-tax, Bombay* [1930] (5 I.T.C. 100), *Kishenchand Tolaram v. A. B. Ghanekar and Others* [1961] (12 S.T.C. 562) and *Rambali Bhuleshwar v. Sales Tax Officer, Recovery I, Bombay* [1961] (12 S.T.C. 595) referred to.—*COMMISSIONER OF SALES TAX v. ALLIMULLAH HAJI SALAMAT* [1968] 22 S.T.C. 165 (Bom.).

—*Whether heir or legal representative liable under 1953 Act in respect of business carried on by deceased dealer—Whether section 26(1) applies to transfers by operation of law, including succession.*—There is no provision in the Bombay Sales Tax Act, 1953, making liable the heir or the legal representative of a deceased dealer for the payment of the tax in respect of the business carried on by the deceased dealer. The word "transfer" in section 26(1) should be interpreted only as a voluntary transfer *inter vivos* by the act of parties. Therefore on the death of a dealer his heir or legal representative, who has continued the business of the deceased dealer, cannot be

assessed to sales tax under the provisions of the Bombay Sales Tax Act, 1953, in respect of the turnover of the business carried on by the deceased dealer. Under the charging section 5, the liability to pay tax is of the dealer, who must be a living person, and there is nothing in the charging section or in the definition of the word "dealer", which would include within the ambit of the charging section an heir or a legal representative. While dealing with the charging section there is no question of intentment or equity. Unless charge is created by a specific provision of the statute the taxpayer cannot be taxed on an ambiguous provision. *Commissioner of Sales Tax v. Allimullah Haji Salamat* [1968] (22 S.T.C. 165) relied on.—*CHAMPAKLAL SOHANLAL v. J. H. SHAH, SALES TAX OFFICER, ENFORCEMENT BRANCH, AHMEDABAD* [1968] 22 S.T.C. 507 (Guj.).

—See also *TRANSFER OF BUSINESS infra*.

Loan and entrustment of goods for sale to others to discharge loan—Lender of money—Whether dealer.—The plaintiffs advanced moneys to owners of groundnuts and entered the loans in the respective ledger folios of the customers. When the owners brought their stock of groundnuts the plaintiffs allowed them to be stocked in their godown, dried them debiting the drying charges to the owners and decorticated them in the decortivating machine which the plaintiffs owned and debited the owners the decortivating charges. The owners were not credited with any amount representing the purchase price when the groundnut stock was received in the plaintiffs' godown. The plaintiffs sold the groundnut kernels and the sale proceeds when received were credited to the respective owners of groundnuts. At the end of the season, there was a final settlement of accounts between the plaintiffs and the respective owners: *Held*, that the plaintiffs were not dealers within the meaning of the Madras General Sales Tax Act, 1939. Where a transaction is treated by both parties as a loan and entrustment of goods for sale to others to discharge the loan, it cannot be treated as a sale.—*PROVINCIAL GOVERNMENT OF MADRAS v. MUDUKURU MUNIRATHNAM CHETTI AND ANOTHER* [1953] 4 S.T.C. 296 (Mad.).

—The assessee was a dealer in groundnuts and he also owned a decortivating mill. Certain dealers entrusted to him groundnuts for decortication and obtained, on the goods, advances on which the dealers had to pay interest. After decortication the goods were sold by the assessee on behalf of the dealers. From and out of the amount realised, the assessee appropriated to himself the advances he made together with

interest thereon as well as the charges payable for decortivating the groundnuts of the dealers and he paid the balance to the dealers: *Held*, that the transaction did not in any way involve the purchase of the groundnuts by the assessee and therefore the amount should not be included in his turnover.—*THE STATE OF MADRAS v. N. R. KUPPUSWAMI GOUNDER AND SONS* [1954] 5 S.T.C. 159 (Mad.).

Loans to customers—Sugar mills advancing monies to ryots to purchase sugar-cane setts from owners of seed plots—Advances adjusted in price payable for supply of sugar-cane—Mills whether dealers in sugar-cane setts—Whether sale by farm-grower liable to tax.—Where sugar mills advanced monies to the ryots, who supplied sugar-cane to them, to enable the ryots to purchase the sugar-cane setts from the owners of the seed plots and this advance was adjusted in the price to be paid by the mills to the ryots for the sugar-cane supplied and the ryots gave promissory notes for the amounts advanced, the mills were only financiers and could not be deemed as dealers in sugar-cane setts under the provisions of the Madras General Sales Tax Act, 1959. As the mills had not purchased the sugar-cane setts in a manner known to law, and as is popularly understood, the transactions involving the sale of sugar-cane setts by the farm-grower were not exigible to tax.—*SAKTHI SUGARS LIMITED AND OTHERS v. DEPUTY COMMERCIAL TAX OFFICER, BHAVANI, AND OTHERS* [1969] 23 S.T.C. 232 (Mad.).

Madhya Pradesh Electricity Board—Whether dealer—Supply of electricity and steam—Sales of coal-ash and specification and tender forms—Liability to sales tax.—The assessee, the Madhya Pradesh Electricity Board constituted under the Electricity (Supply) Act, 1948, carried on the business of selling and supplying electricity as a trading operation with a view to earn profit. But electricity does not fall within the meaning of the definition of "goods" given in the C.P. and Berar Sales Tax Act, 1947, and the Madhya Pradesh General Sales Tax Act, 1958, and when the assessee distributed and supplied electrical energy there was no sale of electricity as goods. Therefore the assessee could not be held to be a "dealer" as defined in section 2(c) of the 1947 Act or section 2(d) of the 1958 Act, in respect of its activity of generation, distribution, sale and supply of electrical energy. *Kumbakonam Electric Supply Corporation Ltd. v. Joint Commercial Tax Officer* [1963] (14 S.T.C. 600) dissented from. Sales of coal-ash by the assessee were liable to sales tax inasmuch as the coal-ash was produced by

the assessee as a subsidiary product and it was sold regularly. Steam falls within the definition of "goods" given in the Sales Tax Acts of 1947 and 1958; but the supply of steam by the assessee was not taxable for the reason that when the assessee supplied steam it was not with a profit-motive. By supplying specification and tender forms at a price to persons who desired to give tenders for certain contracts, the assessee did not carry on the business of selling specification and tender forms. As the assessee was not a dealer in respect of its activity of generation, distribution, sale and supply of electrical energy, the assessee was not entitled to purchase any taxable goods for the said activity without paying any sales tax to the selling dealer. The question, therefore, of the assessee becoming liable to purchase tax under section 4(6) of the C.P. and Berar Sales Tax Act, 1947, or section 7 of the M.P. General Sales Tax Act, 1958, could not arise. Those provisions apply only when taxable goods were purchased by a registered dealer free of taxes.—*MADHYA PRADESH ELECTRICITY BOARD, JABALPUR v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1968] 21 S.T.C. 202 (M.P.).

Medical practitioner owning drug-store-cum-dispensary—Whether dealer.—See *CHEMIST* page 252 *supra*.

—*Medical practitioner manufacturing, advertising and selling a specific medicine*—Whether dealer.—Orders of assessment for the years 1954-55, 1955-56 and 1956-57 made on 31st August, 1957, after the repeal of the Madras General Sales Tax Act, 1939, were saved by section 41 of the Andhra Pradesh General Sales Tax Act, 1957, and were therefore valid. The appellant who manufactured "Satha Jambira Rasayanam" as a specific for venereal diseases, advertised it for sale and received orders by post continually would come within the definition of "dealer" in section 2(b) of the Madras General Sales Tax Act, 1939. The fact that he was registered medical practitioner, by itself, was insufficient to exclude him from the ambit of the definition. He would not also be entitled to the exemption under G.O. Ms. No. 815 dated 7th April, 1948. For the application of the said G.O. the person claiming the exemption should be a medical practitioner owning a dispensary and dispensing medicines only to his patients.—*SRI DAMMA PEDDA YELLAPPA, NANDYAL v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 691 (A.P.).

Manufacturer of gold ornaments—*Advancing gold for manufacturing ornaments*—*Manufacturer, whether dealer*.—The assesseees were manufacturers of gold ornaments for well-known jewellers in

Bombay from gold supplied by those merchants. In some cases the assesseees advanced their own gold and received, after the preparation of the ornaments, an equivalent weight of gold from the customers. The assesseees maintained a certain quantity of gold in their own shop but in the relevant year the assesseees did not purchase any gold. They neither stocked any ready-made ornaments for sale nor sold any bullion. The accounts with their customers were settled from time to time but no price of the ornaments prepared was agreed upon in the case of any of the dealings. The assesseees' balance in the accounts was struck in respect of only the weight of gold. The Tribunal found that there were no accounts of any sales in the books of the assesseees and the assesseees were charging their customers only for the labour in preparing the ornaments: *Held*, that the transactions between the assesseees and their customers were not sales within the meaning of section 2(13) of the Bombay Sales Tax Act, 1953, and they were therefore not dealers within the meaning of section 2(6).—*COLLECTOR OF SALES TAX v. KANTHADBHAI & POPATLAL* [1959] 10 S.T.C. 516 (Bom.).

Non-resident dealer—*Liability to tax*.—The plaintiff had his principal place of business in Cochin State and he was also a resident of that State. He had large dealings with certain merchants in Fort Cochin which was a part of the State of Madras. He sold coir yarns to them. The contracts relating to these sales were executed in Fort Cochin and were signed either by the plaintiff or by his son. The goods were despatched from the plaintiff's office in Cochin State to Fort Cochin and delivered to the merchants in Fort Cochin. The plaintiff contended that he was not liable to sales tax in respect of these sales under the Madras General Sales Tax Act, 1939: *Held*, that the plaintiff was a person who carried on the business of selling goods in the State of Madras and he was therefore a dealer within the meaning of section 2(b), that the sales must be deemed to have taken place in Fort Cochin and that therefore the plaintiff was liable to sales tax under the Act.—*V.O. VAKKAN v. THE GOVERNMENT OF THE PROVINCE OF MADRAS* [1952] 3 S.T.C. 204 (Mad.). On appeal to the Supreme Court this decision was affirmed. See page 469 *infra*.

—Under the Madras General Sales Tax Act, 1939, where a dealer is a non-resident and he has a resident agent then that agent is made liable for tax. The Act does not say that where a dealer is a non-resident and he has no resident agent, he is exempt from liability under the Act. The intention to make a non-resident liable for

tax very clearly emerges from the words actually used in the Act. The State Legislature has jurisdiction to make non-residents liable for tax in respect of transactions they put through inside the State.—*THE PUBLIC PROSECUTOR v. K. SANKUNNY AND OTHERS* [1954] 5 S.T.C. 5 (Mad.).

—The East Punjab General Sales Tax (Second Amendment) Act (X of 1954) is a valid enactment because the State Legislature can, under the provisions of Article 286(1) of the Constitution read with the explanation, make provision for the levy of tax on sales where the goods are sold or delivered in the State. The petitioner-company manufacturing certain goods had a registered office in Bombay and a sales department at Delhi but they had no office or department anywhere within the State of Punjab. The office at Delhi directly as well as through its canvassers received orders from merchants and dealers in the State of Punjab for supply of the goods manufactured by it and in compliance with such orders despatched the goods to various places in the State of Punjab and realised payment of price in Delhi: *Held*, that the petitioner came within the definition of “dealer” in section 2(b) of the Act and was therefore liable to sales tax.—*TATA OIL MILLS COMPANY LTD. v. ASSESSING AUTHORITY (SALES TAX) AND ANOTHER* [1954] 5 S.T.C. 256 (Punj.).

—Physical presence of the person or his agent within the State of U.P. for the purpose of carrying on the business of sale is necessary before he can be said to be carrying on that business within the definition of “dealer” in the U.P. Sales Tax Act, 1948. The petitioner-company with its registered office in Bombay and branch offices at Calcutta, Madras and Delhi but not in Uttar Pradesh carried on the business of sale of certain goods. It had neither a place of business nor any agent within the State of Uttar Pradesh. The petitioner received payments in Calcutta and despatched goods to purchasers in Uttar Pradesh, the railway receipts in respect of the goods being sent to the purchasers concerned according to their instructions. Railway receipts were drawn on “self” but were actually endorsed in Calcutta according to the usual business practice of the petitioner: *Held*, that as the petitioner had neither a place of business nor an agent in Uttar Pradesh, it was not a dealer within the definition of that term in the U.P. Sales Tax Act, 1948, and it was therefore not liable to sales tax. The words “in the United Provinces” in the definition of “dealer” applied not only to the supplying of goods but also to the carrying on the business of sale.—*J. L. MORISON v. THE SALES TAX OFFICER AND OTHERS* [1955] 6 S.T.C.

193 (All.). On appeal this decision was affirmed on different grounds. See below:—

—The respondent-company incorporated under the Indian Companies Act had its registered office in Bombay and a branch at Calcutta but no office or agent within the State of U.P. In the course of its business the respondent supplied goods to persons in U.P. These goods were despatched by rail to purchasers in U.P. by the respondent's Calcutta office where payment for the goods was made: *Held*, that as the sales effected by the respondent took place outside the State of U.P., it was not a “dealer” and was therefore not liable to sales tax. *J. L. MORISON v. THE SALES TAX OFFICER AND OTHERS* [1955] (6 S.T.C. 193) affirmed on different grounds.—*SALES TAX OFFICER, BANARAS, AND OTHERS v. J. L. MORISON SON AND JONES (INDIA) LTD.* [1956] 7 S.T.C. 755 (All.).

—The definition of dealer in section 2(3) of the Assam Sales Tax Act, 1947, or the rules framed under the Act do not require that the dealer should have a fixed place of business within the State. The jurisdiction to levy tax arises from the territorial nexus where the goods are delivered for consumption as a direct result of the sale or purchase. The place of residence of the dealer is not at all material. The words “carries on the business of selling or supplying goods in the State” in section 2(3) are comprehensive enough to cover the transactions of selling and supplying of goods to dealers and consumers inside the State by a person having no fixed place of business inside the State. The petitioner-company with its registered office in Bombay but no office or factory in the State of Assam supplied cement to dealers and consumers in Assam for the purpose of consumption therein. The petitioner contended that it was not a dealer liable to be registered under the Assam Sales Tax Act, 1947, inasmuch as it had no fixed place of business inside the State and the sales actually took place in its various branches outside the State and it was only in pursuance of the sales that the goods were later delivered to the buyers inside the State: *Held*, that the petitioner was a dealer carrying on the business of sale and supply of goods in the State of Assam and the transactions carried on by it were transactions of sale within the meaning of the Assam Sales Tax Act read with Article 286 of the Constitution. *Held further*, that the Assam Sales Tax Act is entirely within the competence of the State Legislature and in making the law, the Legislature has not violated any of the articles of the Constitution nor has it affected any of the fundamental rights of the petitioner.—*CEMENT MARKETING CO. OF INDIA*

LTD. v. STATE OF ASSAM AND OTHERS [1955] 6 S.T.C. 280 (Assam).

—It is not correct to say that under the Explanation to Article 286(1)(a) a seller can be taxed only if he is within the State. The language of the Explanation does not impose any limitation or condition on the exercise of this power. It is general and unqualified, and will comprehend all cases in which goods are delivered for consumption in the taxing State irrespective of whether the seller is within the State or not.—*Per VENKATARAMA AYYAR, J.*, in his dissenting judgment in *THE BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR AND OTHERS* [1955] 6 S.T.C. 446 (Supreme Court).

—A person, whether he is a resident or non-resident, is a dealer within the meaning of the Madras General Sales Tax Act, 1939, if he carries on the business of selling goods within the State of Madras. Explanation (2) to section 2(b) makes the agent (if any) also a “dealer” and it is not intended to take the principal outside the scope of liability. *Vakkan and Others v. The Government of the Province of Madras* [1952] (3 S.T.C. 204) affirmed.—*V. O. VAKKAN AND OTHERS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 647 (Supreme Court).

—The activities of selling or supplying goods in Madhya Pradesh if carried on habitually would amount to a carrying on of the business of selling or supplying goods in the State of Madhya Pradesh and even an outside merchant who indulged in such activities may in such event be said to be carrying on business in Madhya Pradesh and would come within the definition of “dealer” given in section 2(c).—*MOHANLAL HARGOVIND DAS v. STATE OF MADHYA PRADESH* [1955] 6 S.T.C. 687 (Supreme Court).

—A person, whether he is a resident or non-resident, is a dealer within the meaning of the Bombay Sales Tax Act, 1946, if he carries on the business of selling goods within the State of Bombay. The Explanation to the definition of dealer in section 2(c) of the Act makes the agent (if any) also a “dealer” and it is not intended to take the principal outside the scope of liability.—*BOMBAY CYCLE STORES CO. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 260.

—Dealer residing at Nagpur employing clearing agent and effecting sales at Bombay—Liability to Bombay sales tax—Bombay Sales Tax Act (V of 1946), Sec. 2(c).—*BOMBAY CYCLE STORES CO., LTD. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 455 (Bom.) affirmed by Supreme Court in [1961] 12 S.T.C. 790. See below.—

—*Company in Nagpur with registered office in Bombay—Liability to Bombay sales tax.*—The appellant, a limited company with its registered office in Bombay, was carrying on the business of importing and selling bicycles at Nagpur in Madhya Pradesh and it had a clearing warehouse in Bombay. The appellant however submitted that this warehouse belonged to the clearing agent. All the goods from foreign countries received by the appellant were taken delivery of at Bombay and all the transactions of sale were effected with the sanction and approval of the company's director who visited Bombay every now and then. The appellant obtained exemption from sales tax in Madhya Pradesh on the ground that the sales were made directly at Bombay: *Held*, that the appellant carried on the business of selling or supplying goods in the State of Bombay and it was therefore a dealer within the meaning of section 2(c) of the Bombay Sales Tax Act, 1946. Decision of the Bombay High Court in *Bombay Cycle Stores Co. Ltd. v. The State of Bombay* [1957] (8 S.T.C. 455) affirmed.—*BOMBAY CYCLE STORES CO. (PRIVATE) LTD. v. THE STATE OF BOMBAY* [1961] 12 S.T.C. 790 (S.C.).

—To bring an agent within Explanation 2 to section 2(b) of the Madras General Sales Tax Act, 1939, he must be a person who carries on the business of buying or selling goods on behalf of a person resident outside the State.—*STATE v. SAIT NAGJEE PURUSHOTTAM AND CO., LTD.* [1958] 9 S.T.C. 574 (Ker.).

—The residence of a dealer has really no bearing on either the liability to taxation or on exemption from taxation as it is the locus of the transactions that is relevant. A non-resident dealer can therefore be assessed to sales tax under the Madras General Sales Tax Act, 1939. *Vakkan v. The State of Madras* [1955] (6 S.T.C. 647) followed.—*BOLLAM VENKATKRISHNAIAH v. DEPUTY COMMERCIAL TAX OFFICER, SPECIAL CIRCLE, NON-RESIDENT, VEPERY* [1956] 7 S.T.C. 771 (Mad.).

—Non-resident dealers—Imposition of sales tax on non-resident dealers in respect of sales falling under Article 286(1)(a)—Legality.—See CONSTITUTION OF INDIA.

—*Dealer in silk cloth purchasing silk cloth from outside merchants—Whether first dealer in silk cloth—Liability to additional tax.*—The appellant was a dealer in silk cloth and he purchased silk cloth from merchants outside the Hyderabad State. The Sales Tax Authorities held that the appellant was the first dealer in silk cloth in Hyderabad State and was therefore liable to pay tax at the additional rate under rule 7 read with section 4(2) of the Hyderabad General Sales Tax Act, 1950:

Held, that, even assuming that the appellant took delivery of the cloth in the Hyderabad State, he still remained the first dealer in silk cloth as the non-resident merchant was not a dealer for the purposes of the Act and the appellant was therefore rightly assessed as the first dealer of silk cloth. *V. O. Vakkan v. State of Madras* [1955] (6 S.T.C. 647) distinguished. *J. L. Morison v. Sales Tax Officer and Others* [1955] (6 S.T.C. 193) referred to.—*D. R. SAMBIAH v. SALES TAX OFFICER, VIII CIRCLE, SECUNDERABAD* [1956] 7 S.T.C. 508.

—*Agent of non-resident—Authority to buy on behalf of principal—Whether necessary.*—In order to purchase certain candies of castor seeds from different places in the Hyderabad State a company having its registered office in Bombay paid 50% of the price to the appellant. Under a tripartite agreement entered into at Bombay between the appellant, the company and J, its guarantor, the balance of the 50% was to be advanced by the appellant who was to take delivery of the castor seed and store it at Hyderabad and other places at the risk of the company. Further the goods were to be kept by way of security for the loan advanced by the appellant and before obtaining delivery of the goods from the appellant, the company was required to pay the balance of the price. The contract required the company to deposit additional margin money if there was fall in the price of castor seed in the Bombay market. It also gave a right to the appellant to sell castor seed either by entering into a *vaida* transaction in Bombay or by public auction or by a private treaty. The appellant was entitled not only to a commission but also reimbursement in respect of godown, transport and insurance charges, *hamali*, salaries of watchmen, etc., with interest. The question was whether the appellant could be regarded as a dealer under section 18 of the Hyderabad General Sales Tax Act, 1950, with respect to the purchase of castor seeds on the ground that the appellant was the agent of the company: *Held*, (1) that although the word "agent" is not defined in the Hyderabad General Sales Tax Act, 1950, as sales tax is levied on commercial transactions, the word "agent" must be understood to have that meaning which is accorded to it by the Indian Contract Act, 1872; (2) that there was nothing in section 18 of the Act which required that for an agent to be regarded as a dealer, he must have the authority to buy on behalf of the principal; (3) that the appellant was not merely a financier of the company but also its agents

within the ambit of section 18 and it was therefore liable to sales tax. *Rai Sahib Ramdayal Ghasiram & Sons v. The Government of Andhra Pradesh* [1960] (11 S.T.C. 705) affirmed. *Firm Raghubar Dayal v. State of U.P.* (A.I.R. 1955 All. 653) and *Mahadayal Premchandra v. Commercial Tax Officer, Calcutta, and Another* [1958] (9 S.T.C. 428; [1959] S.C.R. 551) distinguished.—*SRINIVAS GOPIKISHEN BADRUKA v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 393 (S.C.). The decision of the High Court is given below:—

—*Agent of non-resident—Legality of assessment under section 18, Hyderabad Act.*—Under an agreement the assessee, a firm resident of the Hyderabad State, acting as agents of a non-resident company took delivery of certain goods purchased by the company in the Hyderabad State, paid the purchase price as remained unpaid by the company to the vendors and stored them on the company's behalf. The amounts paid by the assessee to the vendors had to be repaid by the company within two months with interest. Both the assessee's commission and the amounts advanced by them were to be a first charge on the goods. The assessee could hypothecate or pledge the goods to raise money to take delivery of further goods and could sell the goods in case the money was not paid in terms of the agreement: *Held*, that the assessee were the agents of the non-resident company and were liable to be taxed under section 18 of the Hyderabad General Sales Tax Act, 1950.—*RAMDAYAL GHASIRAM v. GOVERNMENT OF ANDHRA PRADESH* [1960] 11 S.T.C. 705 (A.P.).

—See also Cases digested under pages 15-16.

Ownership of business—Issue of registration certificate—Whether precludes officer from determining real owner in assessment proceedings—Necessity to issue notice to person before holding him a partner of the business.—The application for registration of a business was made by P. disclosing himself to be the sole proprietor of the business and returns were filed by P. No representation was made on behalf of the business that the petitioner was a partner of that business: *Held*, that, in the circumstances, it was not open to the Sales Tax Officer to hold in the assessment order that the petitioner was a partner of the business, unless an opportunity had been given to him to show that he was not. *Held further*, that merely because the registration application required P. to specify the name of the proprietor or the names of the partner, and the registration certificate was granted by the Sales Tax Officer, did not preclude the Sales Tax Officer from

subsequently examining, when taking assessment proceedings, what was the identity of the dealer.—**AMIR CHAND v. THE SALES TAX OFFICER AND OTHERS** [1966] 17 S.T.C. 76 (All.).

Partner of firm—Whether dealer.—See **FIRM** *infra*.

Photographer—Whether dealer—Production of photographs and supply of copies to customers—Liability to sales tax.—See **PHOTOGRAPHER** *infra*.

Printer—Whether dealer.—See **PRINTER** *infra*.

Railways—Sales of food and drink effected by the Integral Coach Factory to the workmen of the factory—Whether liable to sales tax.—**CHAIRMAN, COMMITTEE OF MANAGEMENT, INTEGRAL COACH FACTORY CANTEN, MADRAS v. DEPUTY COMMERCIAL TAX OFFICER, PERAMBUR DIVISION** [1962] 13 S.T.C. 827 (Mad.).

—Sale of foodstuffs by the Carriage Works Canteen, Southern Railway, Perambur—Liability to sales tax.—**THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, MADRAS 7 v. CARRIAGE WORKS CANTEN, SOUTHERN RAILWAY, PERAMBUR** [1963] 14 S.T.C. 654 (Mad.).

—Sale of foodstuffs by the Southern Railway Employees' Workshop Canteen, Golden Rock, Tiruchirapalli—Liability to sales tax.—**SOUTHERN RAILWAY EMPLOYEES' WORKSHOP CANTEN v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUCHIRAPALLI TOWN IV, AND ANOTHER** [1965] 16 S.T.C. 187 (Mad.).

—Southern Railway—Sale of foodstuffs and refreshments for passengers—Liability to sales tax.—**UNION OF INDIA BY THE GENERAL MANAGER, SOUTHERN RAILWAY, MADRAS v. THE STATE OF MADRAS** [1967] 20 S.T.C. 107 (Mad.).

—Co-operative canteen for railway servants—Supply of food and refreshments on no profit and no loss basis—Liability to sales tax.—**THE SOUTHERN RAILWAY CO-OPERATIVE CANTEN LTD. v. COMMERCIAL TAX OFFICER, II CIRCLE, MYSORE CITY** [1967] 20 S.T.C. 96 (Mys.).

Registered dealer—See **REGISTERED DEALER** *infra*.

Scheme of distribution of controlled cloth—**Distributing retail consignee**—Whether dealer.—Under a scheme of distribution of cotton piece-goods brought into effect in 1945, the plaintiff was appointed a distributing retail consignee for which he was not given any remuneration but was allowed railway freight, cartage and interest at 6 per cent. on the money advanced by him.

It was contended on behalf of the State that the plaintiff was purchasing goods from the import dealers and then effecting sales to the retailers and he was therefore a "dealer" under the Madras General Sales Tax Act, 1939: *Held*, that the plaintiff acted only as an agent and could not therefore be treated as a "dealer" within the definition in the Act.—**P. VAIDYANATHA IYER v. THE STATE OF MADRAS** [1957] 8 S.T.C. 268 (Mad.).

—A distributing retail consignee appointed under the scheme of distribution of controlled cloth is not a "dealer" as defined in the Madras General Sales Tax Act, 1939. He is simply in the position of an intermediary and his function is only that of an agent for distribution of the goods and not for effecting sales. *P. Vaidyanatha Iyer v. The State of Madras* [1957] (8 S.T.C. 268) followed.—**K. K. VENKATACHALAM CHETTIAR COMPANY v. THE STATE OF MADRAS** [1957] 8 S.T.C. 271 (Mad.).

Second-hand goods—The applicant who did not mention motor cars in his application for registration among goods ordinarily purchased by him for resale objected to the inclusion in his taxable turnover of a certain sum representing the price for which he sold two of his old cars. Apart from the two cars sold during the quarter he had not sold any other new or used cars: *Held*, that the applicant could not be considered as a person engaged in the business of buying and selling used motor cars and the price of the two cars could not be included in his taxable turnover. In the circumstances governing the general scheme of the C.P. and Berar Sales Tax Act, 1947, it could not be held without fuller examination, that sales of second-hand goods should not be included in the taxable turnover even where they constitute one of the lines of business of the dealer. The question whether they constitute one of the lines of business of the dealer will not necessarily depend on whether he mentioned those goods in his application for registration. What would be of practical importance is the volume of and the degree of frequency in business transactions in these lines.—**MOHANLAL RAMKISHAN NATHANI v. THE STATE** [1952] 3 S.T.C. 305. On a reference to the High Court this decision was affirmed. See below :—

—The applicant was registered as a dealer in motor accessories and spare parts, including tyres and tubes, and in motor spirit and lubricants, but not in motor vehicles of any kind. During the relevant period he sold two used trucks and their sale price was included in his taxable turnover

by the Sales Tax Authorities. The applicant did not sell any other motor vehicles: *Held*, that the case was covered by the Board's ruling in *Mohanlal Nathani v. The State* [1952] (3 S.T.C. 305) and the sale price was therefore not liable to be included in the taxable turnover of the applicant.—*ONKARMAL JODHRAJ AGARWAL v. THE STATE* [1952] 3 S.T.C. 313.

—Exemption in respect of the sale of second-hand or used goods cannot be claimed unless such goods are held to have had no relation whatever with any of the businesses for which the assessee is registered or is liable to be registered as a dealer under the C.P. and Berar Sales Tax Act, 1947. The assessee-company sold some motor lorries, which were used for the transport of goods manufactured at the assessee's mills and the Sales Tax Authorities included their sale price in the assessee's turnover: *Held*, that the vehicles were part of the equipment required for the business for which the assessee had been registered and the price for which they were sold had been rightly included in the turnover.—*THE SAWATRAM RAMPRASAD MILLS CO., LTD. v. THE STATE* [1952] 3 S.T.C. 314.

—A person can be regarded as a dealer within the meaning of section 2(c) of the C.P. and Berar Sales Tax Act, 1947, only in relation to the goods which it is his business to sell or supply. So, where a person, though a dealer in respect of certain commodities effects a sale of a commodity which it is not his business to sell, he is not liable to be taxed under the Act. It is not correct to say that merely because a commodity falls within Schedule I of the Act any person who effects a sale thereof is liable to pay tax, nor is it correct to say that because a person is a dealer within the meaning of the Act he is bound to pay tax with regard to every sale of property which falls under Schedule I to the Act. It must be established that the commodity sold falls within Schedule I and the person who sells it is engaged in the business of selling or supplying that commodity. A dealer effected casual sales of certain goods, the like of which was not mentioned either in his application for registration or in the registration certificate granted to him, among goods ordinarily purchased by him for resale. The goods sold were used or second-hand goods forming his private property for which he had no further use and they had no connection with any of the businesses for which he was registered or was liable to be registered: *Held*, that the sales were not liable to be taxed.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR v. MOHANLAL RAMKISAN NATHANI, RAIPUR* [1955] 6 S.T.C. 136 (Nag.).

—See also cases digested under "Carrying on business" page 447 *et seq.*

Sculptor—Whether dealer.—The petitioner, a well-known sculptor, artist and painter, made and supplied two bronze casts, one of Mahatma Gandhi, and the other named "Triumph of Labour", to two State Governments at a cost of Rs. 60,000 and Rs. 41,000 respectively. On the question whether the petitioner was liable to sales tax on these transactions: *Held*, on the facts, that the petitioner was not a dealer and that in supplying the two pieces of sculpture he did not effect sales of them in the course of trade or business in such casts and therefore he was not liable to sales tax.—*D. P. ROY CHOWDHURY v. STATE OF MADRAS* [1962] 13 S.T.C. 866 (Mad.).

Society registered under Act 21 of 1860—Evangelical Literature Service—Sale of Bible and other Christian religious books—Liability to sales tax.—*EVANGELICAL LITERATURE SERVICE v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS* [1964] 15 S.T.C. 825 (Mad.).

Son managing business of father—Whether dealer.—See *KISHENCHAND TOLARAM v. A. B. GHANEKAR AND OTHERS* [1961] 12 S.T.C. 562 (Bom.).

Starting of new business—When liability to pay tax arises.—Under section 4(5) of the Bihar Sales Tax Act, 1947, a dealer must start a new business either singly or jointly with any other person and in such a case such newly started business would be liable to pay tax on sales from the date of commencement of the said business. Where there was a partnership business consisting of two partners, unless it could be established that both these partners had set up an additional place of business, no assessment in terms of section 4(5) could be justified.—*MODERN DRESSES v. THE STATE OF BIHAR* [1960] 11 S.T.C. (T.D.) 44.

Supply of coal to mills by colliery through selling and buying agents—Whether parties *del credere* agents—Liability to sales tax.—See page 284 *supra*.

—**Supply of coal under Colliery Control Order, 1945—Agreement entered into by broker with State Government for supply of coal from collieries outside State—Broker receiving only brokerage from collieries—Whether dealer—Liability to sales tax.**—The petitioner carrying on the business of supplying coal throughout India had a branch in Rajasthan which supervised the supply of coal made to consumers directly by the collieries. The supply of coal from the collieries to the consumers was governed by the provisions of the Colliery Control Order, 1945. The petitioner, who was granted the monopoly for arranging the sale in

Rajasthan of the coal from the collieries belonging to a company outside Rajasthan, entered into an agreement with the Rajasthan Government for the supply of coal to their power house at Jaipur. The petitioner charged no remuneration from the Rajasthan Government but received a brokerage from the collieries: *Held*, that the petitioner was not a dealer within the definition of the word "dealer" in the first para. of section 2(f) of the Rajasthan Sales Tax Act, 1954, but it was an agent within the explanation to section 2(f) and therefore must be "deemed" to be a dealer for the purposes of the Act. [Case was remitted to the High Court to deal with the following questions:—(1) Whether the sale was outside the State of Rajasthan or was made in the course of inter-State trade; (2) Whether the supply of coal under the Colliery Control Order, 1945, amounted to a sale.]—*STATE OF RAJASTHAN AND ANOTHER v. KARAMCHAND THAPPAR AND BROS.* [1965] 16 S.T.C. 412 (S.C.).

—*Supply of publicity materials by oil company to distributors at cost price or less than cost price—Liability to sales tax.*—Where the assessee, an oil company with limited liability, placed bulk orders for publicity materials to secure the materials at a reduced cost for their distributors and handed over such publicity materials to them either at cost price or at less than cost price: *Held*, that it would be inappropriate to regard the assessee as a dealer in publicity materials. While the distribution may be connected with the pursuit of the assessee's business, it was not by itself its business carried on as a dealer. Therefore the turnover relating to the sales of publicity materials was not chargeable to tax.—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LIMITED, MADRAS-1, AND OTHERS v. THE STATE OF MADRAS* [1968] 21 S.T.C. 227 (Mad.).

—*Supplier of labour to repair embankment—Whether dealer.*—A contractor undertook to repair an embankment by putting new earth and turf. The earth was supplied free by the Government but the contractor had to supply labour with the tools and appliances. The question was whether in removing the earth from one place to another there was a transfer of property in the earth so removed and the contractor could be assessed to sales tax. The Sales Tax Officer assessed the contractor after making a statutory deduction of 30 per cent. of the gross turnover as representing the cost of labour. The Assistant Collector of Commercial Taxes, the Collector of Commercial Taxes and the Revenue Commissioner upheld the order of the Sales Tax Officer. On a reference under section 24(3) the High Court held that

there was no sale or supply of goods, and that the contractor was not a dealer and therefore he was not liable to sales tax. The Court said that it was open to the parties to stipulate separately for the earth used, but in the absence of any such stipulation, it must be held that the contract was merely for the supply of labour.—*KRISHNA CHANDRA ACHARYA v. THE BOARD OF REVENUE, ORISSA* [1955] 6 S.T.C. 400 (Ori.).

—See also under *SALE infra*.

—*Supply of foodgrain to workmen on cost basis.*—*GANNON DUNKERLEY & CO. (MADRAS) LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 216; *W. P. A. SOUNDARAPANDIAN AND BROTHERS v. DEPUTY COMMERCIAL TAX OFFICER, NILAKOTTAI* [1962] 13 S.T.C. 870 (Mad.).

—*Trees grown spontaneously in land.*—In order to become a dealer within the meaning of that term in the General Sales Tax Act, 1925, it is essential that the person should carry on the business of buying or selling goods. When a person sells the produce from his land whether produced therein by agricultural operations or what grows there spontaneously, there is no element of any business involved and, therefore, he cannot be said to be a dealer. Tax Revision Cases Nos. 10, 11 and 12 of 1965.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX v. MAMMU HAJI AND OTHERS* [1967] 19 S.T.C. 45 (Ker.).

—*Sale of old shade trees in tea estate—Liability to sales tax.*—Where the petitioner was a dealer in tea and the sale of shade trees by the petitioner was only an isolated transaction without having any regular frequency it could not be held that the petitioner was a dealer as far as the sale of old shade trees were concerned. The fact that an assessee is a dealer in some commodities does not necessarily mean that he is a dealer in others. *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] (19 S.T.C. 1) relied on.—*SOUTHERN INDIA TEA ESTATES COMPANY LIMITED v. THE STATE OF KERALA* [1967] 20 S.T.C. 397 (Ker.).

—*Zamindar granting rights to cut timber in forest for preparing sleepers—Whether dealer.*—*RAMAKRISHNA DEO v. THE COLLECTOR OF SALES TAX, ORISSA* [1955] 6 S.T.C. 674 (Ori.).

—*Zamindar selling by auction standing timber in zamindari grown spontaneously—Whether zamindar dealer and liable to sales tax.*—*RAJA BHAIKABENDRA NARAYAN BHUP v. SUPERINTENDENT OF TAXES, DHUBRI AND OTHERS* [1958] 9 S.T.C. 60 (Assam).

—*Tailor—Whether dealer.*—In *Krishna Chandra Acharya's* case [1955] (6 S.T.C. 400) PANIGRAHI, C.J., in the course of the judgment

observed that instances of similar contracts occur in every day life and cited as example the case of a tailor. "For example", said the learned Judge, "when a piece of cloth is given to a tailor for making a coat, the value of the thread and buttons used is not separately assessed so that it can be said that the work involved sale of thread and buttons. The contract is essentially for the work done and there is no separate stipulation for payment of the value of the thread or buttons. Undoubtedly several appliances are used, like the sewing machine, needles, thimble, etc., but it cannot be said that there is a transfer of the property in these articles to the owner."

—See also *TAILOR infra*.

Trade name—Proceedings initiated by issue of notice in trade name—Validity.—Under the C.P. and Berar Sales Tax Act, 1947, a dealer must be a person. The trade name of an individual (Laxmi Stores) is not by any means a person within the meaning of the law and therefore a notice issued in the trade name is not either to a person or to a dealer and the entire proceedings founded upon such a notice are invalid.—*SHANKAR DHAWAN AND OTHERS v. SALES TAX OFFICER, CIRCLE II, NAGPUR, AND ANOTHER* [1964] 15 S.T.C. 292 (Bom.).

Transferee of business—Whether dealer.—The dealer is a person and it is the dealer who is liable to pay the sales tax. The machinery or property of a factory or a mill cannot be said to be the dealer nor is there any provision in the U.P. Sales Tax Act, 1948, making the tax a charge on the machinery and other property. There is no provision anywhere in the U.P. Sales Tax Act for the recovery of sales tax assessed on a dealer from a transferee of the property belonging to the dealer. The liability to sales tax is of the dealer on whom an assessment of sales tax should be made and the money can be recovered from him or from his assets in case of his death. The U.P. Sales Tax Act does not provide for the recovery of the amount from any person other than the assessee or the dealer. The owner of a mill had not paid sales tax for the years 1949 to 1954. He sold the mill in 1955 to the petitioners free of all encumbrances. The question was whether the sales tax assessed for the five years could be recovered from the petitioners by attaching the machinery and building of the mills: *Held*, that so long as the sale deed stood, the sales tax assessed on the previous owner could not be recovered from the petitioners.—*DEVI DAYAL AND OTHERS v. THE SALES TAX OFFICER, KANPUR, AND OTHERS* [1956] 7 S.T.C. 145 (All.).

—Company taking over business—Assets and liabilities of proprietor excluded—Whether company transferee and "dealer".—The petitioner company which was incorporated in May, 1948, and got itself registered as a dealer under the Bengal Finance (Sales Tax) Act, 1941, in July, 1948, acquired and took over as a going concern the business of a proprietary concern including the stock-in-trade, machinery, furniture and goodwill but neither the assets nor the liabilities of the proprietor. In 1950, the Taxing Authorities required the company to produce books of accounts and records for purposes of assessment of sales tax in respect of the four quarters ending 31st March, 1948, and the four quarters ending 31st March, 1949. The company applied under Article 226 for writs in the nature of *mandamus*, prohibition or *certiorari* for cancelling or quashing the requisition for production of accounts and contended, *inter alia*, that it was neither a "transferee" nor a "dealer" within the meaning of the Act and that it had been registered as a dealer and transferee under a mistaken impression as to its correct status: *Held*, that as the petitioner had an adequate and efficacious remedy under the provisions of the Bengal Finance (Sales Tax) Act, 1941, the application under Article 226 was misconceived. Although a portion of the assets and the liabilities were excluded from the scope of the transfer, the petitioner was a transferee within the meaning of section 17 and as such a "dealer" within the meaning of the Act.—*MAJOR SOAP CO., LTD. v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, CALCUTTA* [1952] 3 S.T.C. 444 (Cal.).

—See also Legal Representative page 465 *supra* and Transfer of Business *infra*.

Transport service.—The business of providing transport services, or, for that matter, services of any other kind is not a business for the carrying on of which a dealer has to be registered under the C. P. and Berar Sales Tax Act, considering that section 2(c) of the Act restricts the definition of "dealer" to persons carrying on the business of selling or supplying goods.—*H. S. KAMATH, PRESIDENT, IN ONKARMAL JODHRAJ AGARWAL v. THE STATE* [1952] 3 S.T.C. 313 at p. 314.

—See also Bus operators page 459 *supra*.

Trustees of the Port Trust—Whether dealer.—The Madras Port Trust Act, 1905, does not constitute the Board of Trustees of the Port Trust for the purpose of carrying on any business in buying and selling with a view to make a profit and in supplying water to the ships that call at the Port, the Trustees were

only discharging a statutory duty imposed upon them by the Act and were not doing any business so as to make them a dealer within the meaning of section 2(b) of the Madras General Sales Tax Act, 1939. Therefore the Trustees of the Port of Madras were not liable to pay sales tax in respect of the charges levied and collected by them for water supplied to the ships that called at the Madras Port.—**TRUSTEES OF THE PORT OF MADRAS v. THE STATE OF MADRAS** [1960] 11 S.T.C. 224 (Mad.).

Textile mill—Sales of excess cotton and cotton waste—Liability to sales tax.—**THE ARYODAYA SPINNING AND WEAVING COMPANY LIMITED v. THE STATE OF BOMBAY** [1960] 11 S.T.C. 141 (Bom.).

—Textile mill—Sale of waste cotton, useless ropes and other sundry items—Whether sale in the course of business and liable to sales tax.—**THE STATE OF MYSORE v. THE BANGALORE WOOLLEN, COTTON AND SILK MILLS, COMPANY LTD.** [1962] 13 S.T.C. 106 (Mys.).

—Textile mill—Sale of old machines as part of programme of modernizing machinery, and sale of stores, cinders and waste caustic liquor—Liability to sales tax.—**AMBICA MILLS LTD. AND OTHERS v. THE STATE OF GUJARAT AND ANOTHER** [1964] 15 S.T.C. 367 (Guj.).

—Textile mill—Sales of stores, materials and other goods and old looms and machinery—Liability to sales tax.—**ARVIND MILLS LTD. v. STATE OF GUJARAT** [1966] 18 S.T.C. 311 (Guj.).

—Textile mill—Sales of old discarded goods, coal, byproducts and subsidiary products—Whether company carries on business of selling such goods—Liability to sales tax.—**THE STATE OF GUJARAT v. RAIPUR MANUFACTURING CO. LTD.** [1967] 19 S.T.C. 1 (S.C.).

—See also **STATE OF GUJARAT v. ASHOK MILLS LTD.** [1967] 19 S.T.C. 11 (S.C.), **STATE OF GUJARAT v. ARVIND MILLS LTD.** [1967] 19 S.T.C. 12 (S.C.) and **STATE OF GUJARAT v. AMBICA MILLS LTD.** [1967] 19 S.T.C. 12 (S.C.).

—Textile mill—Sales of empty tins, dealwood boxes, loop iron, tiles, cinder etc.—Liability to sales tax.—**LOYAL TEXTILE MILLS LTD. v. THE STATE OF MADRAS** [1968] 21 S.T.C. 195 (Mad.).

Unserviceable goods—A person who sells goods which are unserviceable or unsuitable for his business does not on that account become a dealer in those goods, unless he has an intention to carry on the business of selling those goods.—**THE STATE OF GUJARAT v. RAIPUR MANUFACTURING CO., LTD.** [1967] 19 S.T.C. 1 (S.C.).

Zamindar selling excess of grains and sugar-cane after meeting his requirements—Whether "dealer"—The plaintiff, the proprietor of an estate, possessed extensive zirat fields on which he grew grains like paddy, khesari, wheat and gram besides sugar-cane. After meeting the personal requirements of himself, his family and his large staff the plaintiff sold a portion of the excess which was not required to be stored for consumption. The Sales Tax Authorities served the plaintiff with a notice that he should get himself registered as a "dealer" under the Bihar Sales Tax Act, 1944, but the plaintiff denied that he was a dealer and requested them to withdraw the notice. On their refusal to do the same the plaintiff instituted a suit against the Province of Bihar for a declaration that he was not a dealer and restraining them from proceeding with the assessment and realising any tax from him: *Held*, (1) that the suit was not maintainable inasmuch as the assessee had a complete remedy under the provisions of the Bihar Sales Tax Act; (2) that the suit by the plaintiff for a declaration that he was not a dealer, and therefore could not be assessed by the Sales Tax Authorities was not a suit for a declaration of any right, and therefore the requirements of section 42 of the Specific Relief Act were not fulfilled; (3) that although grains or sugar-cane were goods within the meaning of the Act, the mere fact that the plaintiff sold the excess over his requirements could not make him a dealer within the meaning of section 2(c).—**RAJA VISHESHWAR v. PROVINCE OF BIHAR** [1951] 2 S.T.C. 129 (Pat.).

Zamindar granting rights to cut timber in forest for preparing sleepers—Whether dealer.—The assessee, the Maharaja of Jeypore, gave to a company the right of cutting from his forests sal trees for preparing sleepers therefrom and supplying them to the railways in consideration of the payment to him of a royalty which represented a certain proportion of the sale price of the sleepers. Under the agreement the company had to pay a minimum royalty to the assessee. The agreement also recited that the sal trees had been sold to the company. The Sales Tax Authorities held that the transaction was a sale and as the assessee had entered into similar agreements with other persons, he was also a "dealer": *Held*, by PANIGRAHI, C.J., that the recital in the agreement that sal trees had been sold to the company was not sufficient to make the transaction a sale if really it was not one. The royalty receivable by the assessee was not "sale price" of the timber but was a periodical payment made by the company in consideration of the benefits granted to it by the assessee and

therefore the transaction was not a "contract of sale" and was not liable to sales tax: *Held*, further, by PANIGRAHI, C.J., and NARASIMHAM, J.—(1) that the assessee was not a dealer within the meaning of the Orissa Sales Tax Act, inasmuch as he was not carrying on the business of selling or supplying goods; (2) that though the company carried on the business of preparing sleepers and selling them to the railways it could not be said that the assessee was also carrying on the same business through his agent; (3) that if the assessee had engaged himself in the business of planting trees and selling them, after converting them into sleepers, the position would be different. *Per* NARASIMHAM, J.—By the expression "business of selling" the Legislature meant not the sale by the owner of the produce from his lands or forests but the sale after purchase or sale after manufacture. *Per* PANIGRAHI, C.J.—The element of "purchase" which is one of the necessary ingredients of the "business" as contemplated under the Orissa Sales Tax Act is lacking in the present case. [NARASIMHAM, J., reserved his opinion on the question whether the royalty payable under the agreement with the company was "sale price" or not.]—RAMAKRISHNA DEO *v.* THE COLLECTOR OF SALES TAX, ORISSA [1955] 6 S.T.C. 674 (Ori.).

Zamindar selling by auction standing timber in zamindari grown spontaneously.—Whether zamindar dealer and liable to sales tax.—RAJA BHAIKABENDRA NARAYAN BHUP *v.* SUPERINTENDENT OF TAXES, DHUBRI, AND OTHERS [1958] 9 S.T.C. 60 (Assam).

DECIMAL COINAGE

Rate of tax expressed in anna—Method of calculation of total amount of sales tax payable.—RAM KISHAN SUNDARLAL *v.* STATE OF UTTAR PRADESH [1962] 13 S.T.C. 923 (All.).

—Whether levy of tax at 2 naye paise for 3 pies unconstitutional.—MANGALORE GANESH BEEDI WORKS *v.* STATE OF MYSORE [1963] 14 S.T.C. 198 (S.C.).

—Rate of tax expressed in anna—Method of calculation of tax payable.—AMRIT BANASPATHI AND ANOTHER *v.* THE STATE OF UTTAR PRADESH AND OTHERS [1965] 16 S.T.C. 93 (S.C.).

DECLARED GOODS

(See CENTRAL SALES TAX ACT.)

DEDUCTIONS

Exemptions or deductions and non-liability to tax—*Distinction*.—There is a broad distinction between the provisions contained in the Statute in regard to the exemptions of tax or refund or

rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax on such sales and they should be excluded from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.—A. V. FERNANDEZ *v.* THE STATE OF KERALA [1957] 8 S.T.C. 561 (S.C.).

Accommodation sales—*Whether deduction can be claimed if they are regular*.—There is no indication in the definition of turnover in section 2(r) of the Madras General Sales Tax Act, 1959, or rule 6(c) of the Madras General Sales Tax Rules, 1959, that the accommodation sales should be casual and that the supply of goods from the stock of another dealer to a particular customer should not be a regular affair. The assessee entered into a contract with the Director of Medical Services for the supply of bread to the various Government Hospitals in the City at a certain rate. The assessee supplied bread from their own stock to one hospital only and arranged with sister concerns to supply directly to the other hospitals from their stocks. In respect of these sales the assessee charged the same rate at which the assessee had contracted to supply the bread. The assessee showed these transactions in their accounts as accommodation sales mentioning the names of the sister concerns which supplied the bread to the hospitals and charged no profit. On the question whether these sales, being regular and systematic, were accommodation sales: *Held*, that the sales were accommodation sales and were therefore not liable to be included in the assessee's turnover.—THE STATE OF MADRAS *v.* ITALY BAKERY [1968] 22 S.T.C. 144 (Mad.).

Adat, dalali, bank commission, charity and insurance—Sale of compressed cotton in bales—*Adat, dalali*, bank commission, charity and insurance added to purchase price and realised from purchasers—Whether can be included in sale price—Whether there is sale of packing materials—Central Sales Tax Act (74 of 1956), Sec. 2(h), (j).—VIMALCHAND PRAKASHCHAND, SARAF, A.

UJJAIN v. COMMISSIONER OF SALES TAX, MADHYA PRADESH [1968] 22 S.T.C. 22 (M.P.).

Assessment—Deductions granted by issuing notification during the year—Whether should be given effect to for the whole year—The year being the unit, both for the purpose of chargeability and assessment proceedings under the Central Sales Tax Act, 1956, if any notification granting a deduction comes into force during that year, it must be given effect to as from the beginning of that assessment year. Therefore in respect of the period 1st July, 1957, to 31st March, 1958, an assessee would be entitled as from 1st July, 1957, to the deductions granted by a notification dated 6th November, 1967, which was published and came into force on 16th November, 1967. *Mathra Parshad & Sons v. The State of Punjab* [1962] (13 S.T.C. 180) followed.—**COMMISSIONER OF SALES TAX v. COOPER & Co.** [1968] 22 S.T.C. 111 (Bom.).

Claim for exclusion of part of turnover—A claim for the exclusion of a part of a dealer's turnover on the strength of section 33(1)(a)(i) of the Bihar Sales Tax Act, 1947, cannot be said to be an allowable deduction under the proviso to rule 19 of the Bihar Sales Tax Rules. Transactions which attract the provisions of section 33 are in substance outside the scope of the Act on which no tax can be imposed and a claim by a registered dealer in respect of such transactions cannot in law be regarded as a claim for allowable deductions or exemptions properly so called. It would be straining the language of the second part of the proviso to rule 19 to hold that such transactions fall within its purview.—**STATE OF BIHAR v. RAI BAHADUR HARDUT ROY MOTI LALL JUTE MILLS** [1960] 11 S.T.C. 17 (S.C.).

Commission to agents—Where commission to agents was not as a matter of contract between the parties payable to or receivable by the dealer, the sum representing the commission was liable to exclusion from the turnover of the dealer.—**COMMISSIONER OF SALES TAX, MADHYA PRADESH v. ANWAR KHAN MAHBOOB Co.** [1956] (7 S.T.C. 197) (Nag.) affirmed by (S.C.) in 11 S.T.C. 790.

—See also **DISCOUNT** *infra*.

Dharmada—Dharmada realised by the assessee could not be included in the sale price inasmuch as it was a willing charge paid by the buyer in addition to the valuable consideration for the transfer of property and not a charge for anything done by the dealer in respect of the goods at the time of or before delivery thereof.—**NEMKUMAR KESRIMAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH** [1955] 6 S.T.C. 222 (Nag.)

Dharmam, subscriptions and accountancy charges.—Dharmam (charity), *valtar* (subscriptions to a local merchant's association) and *katha cooly* (accountancy charges) which the assessee, a commission agent licensed under section 8 of the Madras General Sales Tax Act, 1939, collected from buyers of goods as part of the transaction of sale at a fixed percentage of the value of the goods sold would clearly fall within the definition of turnover in section 2(i) of the Act as amended by the Andhra Amendment Act of 1954. The fact that a small part of the payment made by the buyer is not appropriated by the assessee for his commission or by his principals for their own use but is set apart by them for certain specified objects or purposes, does not mean that the payment is gratuitous or dissociated from the sale. In substance, though not in form, the payments must be regarded as part of the consideration for the sale.—**POOSARLA SAMBAMURTHI v. STATE OF ANDHRA** [1956] 7 S.T.C. 652 (Andh.).

Dharmam—The amended definition of turnover in section 2(i) of the Andhra Act particularly the last limb of that clause, is designedly made so wide as to catch within its net, amounts collected by a dealer towards dharmam on the occasion of a sale and as part of the sale transaction. *Poosarla Sambamurthi v. State of Andhra* [1956] (7 S.T.C. 652; 1956 A.L.T. 810) approved.—**THE GOVERNMENT OF ANDHRA v. EAST INDIA COMMERCIAL Co., LTD.** [1957] 8 S.T.C. 114 (A. P.).

Discount.—Cash discount allowed by the assessee at the time of sale of goods to wholesale and retail dealers and also the railway freight paid for by him should be deducted from the assessee's gross turnover.—**PARANDE BANDHU, In re** [1950] N.L.J. 576.

—**Discount—Meaning of—Manufacturing company and sole selling agent—Commission paid to agent—Whether discount.**—The word "discount" is not defined in the Andhra Pradesh General Sales Tax Act, 1957, but it can be taken as an abatement of the price. The existence of a sale, however, is essential in order to enable a dealer under the Act and the Rules framed thereunder to claim deduction of an amount as discount from his total turnover. Where an agreement between a manufacturing company and its sole selling agent envisaged only a relationship of principal and agent and not that of vendor and purchaser and there was no evidence to show that the parties had given up the agreement of agency and had been entering into outright sale transactions: *Held*, that the commission paid to

the agent was not a discount within the meaning of section 2(s)(ii) of the Act and rule 6(1)(a) of the Rules.—**THE HYDERABAD CHEMICALS AND FERTILIZERS LTD. v. STATE OF ANDHRA PRADESH** [1968] 22 S.T.C. 298 (A.P.).

Despatch of goods to address outside State by dealer.—In arriving at the taxable turnover of an assessee under the Bihar Sales Tax Act, 1944, he was entitled to a deduction of the following items under sub-clauses (ii) and (v) of clause (a) of sub-section (2) of section 5: “(ii) Sales to a registered dealer of goods specified in the purchasing dealer’s certificate of registration as being intended for resale by him, or for use by him in the manufacture of any goods for sale or in the execution of any contract, and on sales to a registered dealer of containers and other materials for the packing of such goods.” “(v) Sales of goods which are shown to the satisfaction of the Commissioner to have been despatched by, or on behalf of, the dealer to an address outside Bihar.” In pursuance of an agreement between the assessee and a company having its registered office in Calcutta and one place of business in Muzaffarpur in Bihar, the assessee manufactured tobacco and cigarettes in Bihar exclusively for the company. The assessee despatched all the manufactured goods on behalf of the company and in their name to destinations inside or outside Bihar according to the directions of the company which paid the assessee, by way of remuneration, the full cost of manufacture plus a certain percentage of cost. The certificate of registration issued to the company under section 7 of the Act showed that the company with only one place of business in Muzaffarpur in Bihar was a registered dealer for the re-sale of cigarettes and smoking tobacco. In respect of goods despatched outside Bihar, the question arose whether the assessee was entitled to deduction from the gross turnover the value of such goods either under sub-clause (ii) or sub-clause (v) of section 5(2)(a). Although the Commissioner found that the goods had been despatched to an address outside Bihar he came to the conclusion that the despatches were made by or on behalf of the company: *Held*, (1) (*Per SARJOO PRASAD and SINHA, JJ.*, *DAS, J.*, *contra*) that the assessee was not entitled to the deduction under section 5(2)(a)(v); (2) *Per DAS and SARJOO PRASAD, JJ.* that the assessee was not entitled to the deduction under section 5(2)(a)(ii) inasmuch as the company purchasing the goods through their Calcutta office was not a registered dealer. *Per SINHA, J.*—The legislature has made the question of despatch by or on behalf of the

dealer one of the crucial conditions for the application of sub-clause (v) advisedly because delivery of the goods within the Province of Bihar has been taken to be the essential condition of liability for the tax. If the goods have been delivered within the Province, the dealer is liable to pay taxes thereon. If they have been delivered outside the Province, then the dealer is entitled to the deduction provided for in sub-clause. The question of who despatched the goods, or on whose behalf the goods were despatched, is not a question of form but very much a question of substance, to determine which the legislature has constituted the Commissioner the sole authority. It is not open to the High Court to whittle down the findings of the Commissioner or to go behind them. As the Commissioner had found that the goods were not despatched on behalf of the assessee but on behalf of the company, the provisions of sub-clause (v) were not attracted. *Per SARJOO PRASAD, J.*—Under section 5(2)(a)(v) the deduction contemplated was in respect of that part of the dealer’s turnover which related to sales of goods despatched for sale outside the Province of Bihar. Under the Act the test is where has the sale taken place. The despatch of the goods after their sale has nothing to do with the imposition of sales tax which is to be levied on the sale of goods in Bihar. As the title to the goods had passed to the company before the goods were despatched outside the Province of Bihar the assessee was not entitled to the deduction under sub-clause (v). *Per DAS, J.*—According to sub-clause (v) there is first a sale of goods and then a despatch of the goods to an address outside Bihar. The sub-clause does not speak of sales outside Bihar, but speaks of despatch of the goods outside Bihar. As the despatch of the goods was actually made by the assessee though the property in the goods had passed to the company, the assessee was entitled to the deduction under sub-clause (v). *Per DAS and SINHA, JJ.*—Sub-clause (v) has reference to sales and not to contracts of sales. *Per DAS and SARJOO PRASAD, JJ.*—The expression “registered as dealer” in the taxing statute has an artificial, statutory meaning, a meaning which must be consistent with the scheme and purposes of the taxing statute. For the purposes of the taxing statute, the registration certificate issued to the company with its place of business at Muzaffarpur in Bihar should not be taken as a registration certificate to the company with all its places of business inside and outside Bihar.—**TOBACCO MANUFACTURERS (INDIA) LTD. v. THE STATE OF BIHAR** [1950] 1 S.T.C. 282 (Pat.).

—Where the assessee who was assessed to sales tax under the Bihar Sales Tax Act, 1944, claimed deduction of a certain sum from the gross turnover under section 5(2)(a)(ii) and section 5(2)(a)(v): *Held*, that the Sales Tax Authorities must follow the principle laid down by the High Court in *Tobacco Manufacturers (India) Ltd. v. State of Bihar* [1950] 1 S.T.C. 282; I.L.R. 29 Pat. 746 and then decide the question whether the assessee was entitled to the deduction.—*PRINTERS (INDIA) LTD. v. THE PROVINCE OF BIHAR* [1953] 4 S.T.C. 77 (Pat.).

Despatch of goods outside Bombay—Production of railway receipts necessary.—If the assessee did not produce the railway receipt numbers in support of the contention that goods had been despatched or sold outside the State of Bombay, the Sales Tax Authorities would be justified in rejecting that contention.—*BOMBAY CYCLE STORES v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 260.

Despatch of goods outside West Bengal—Whether sales exempt under section 5(2)(a)(v), Bengal Act.—Section 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act, 1941, would apply only to sales of goods which are despatched by or on behalf of the dealer to an address outside West Bengal. The appellant, who purchased teas at public auctions in Calcutta, appropriated the goods to his contract with Bombay parties, soon after the purchase, and thereafter shipped the goods outside India in the names of the Bombay parties and according to their instructions: *Held*, (1) that as the goods were appropriated to the contract soon after the purchase, the property in the goods immediately passed in favour of the Bombay parties and therefore the despatch of the goods outside West Bengal was not on behalf of the appellant but was by and on behalf of the Bombay parties. Consequently the appellant was not entitled to the exemption under section 5(2)(a)(v); (2) that the appellant was also not entitled to the exemption under Art. 286(1)(b) inasmuch as what was taxed were the sales by the appellant in favour of the Bombay parties and not the sales by the Bombay parties in favour of outsiders and title to the goods had passed in favour of the Bombay parties long before the goods were entrusted to the carrier.—*GORDHANDAS LALJI v. B. BANERJEE AND OTHERS* [1958] 9 S.T.C. 581 (S.C.).

Scope of section 5(2)(a)(v), Bengal Act.—Section 5(2)(a)(v) of the Bengal Finance (Sales Tax) Act, 1941, can only apply in respect of sales of goods which have been despatched by or on behalf of the dealer to an address outside West

Bengal. If the sale was completed at a place in Bihar and the purchasers brought the goods to West Bengal, it would not be liable to sales tax in West Bengal.—*SUNIL KUMAR ROY v. COMMERCIAL TAX OFFICER AND ANOTHER* (No. 2) [1959] 10 S.T.C. 18 (Cal.).

Despatch of goods outside West Bengal—Merger of Cooch Behar with West Bengal but extension of Act to that area on a later date—Despatch of goods to Cooch Behar after merger but before extension of Act—Whether allowable deduction under section 5(2)(a)(v), Bengal Finance (Sales Tax) Act (6 of 1941).—*BIRI TRADING CO. v. MEMBER, BOARD OF REVENUE, WEST BENGAL* [1968] 21 S.T.C. 169 (Cal.).

Excise duty—See EXCISE DUTY *infra*.

Goods supplied to Ministry of Industry and Supply prior to coming into force of Act X of 1949.—The State of West Bengal refused to grant to the petitioner exemption from sales tax under Section 5(2)(a)(iii) of the Bengal (Finance) Sales Tax Act, 1941, in respect of certain goods supplied to the Government of India, Ministry of Industry and Supply, on the ground that the Departments mentioned in the section had become merged into the Department of Industries and Supplies. The supplies were effected by the petitioner before the date when West Bengal Act X of 1949 withdrew the exemption granted under section 5(2)(a)(iii): *Held*, that by a change of the designation which appeared in the exemption section and by means of a simple merger of the functions of those departments with the newly designated department, the petitioner could not be deprived of the benefit of the exemption claimed under section 5(2)(a)(iii).—*SHRI GANESH JUTE MILLS LTD. v. COMMERCIAL TAX OFFICER AND OTHERS* [1952] 3 S.T.C. 175. On appeal see the next para.

—Section 5(2)(a)(iii) of the Bengal Finance (Sales Tax) Act, 1941, provided that the expression “taxable turnover” means that part of a dealer's gross turnover during any period which remains after deducting therefrom.....Sales to the Indian Stores Department, the Supply Department of the Government of India and any railway or water transport administration.” The Supply Department of the Government of India was in existence till January, 1946. There was also then in existence the Department of Industries and Civil Supplies. In January, 1946, the Department of Industries and Supplies was created in place of the above two departments. The pre-war Indian Stores Department which during the war, had been brought under the Department

of Supply, was also incorporated in this new department. This new department took over *inter alia* some of the powers and functions of the old Supply Department. In September, 1947, the Department of Industries and Supplies was re-designated "Ministry of Industry and Supply." The respondent who supplied to the Government of India hessian goods during the period 1st August, 1948, to 1st November, 1948, claimed that the sale of these goods should be excluded from its taxable turnover under section 5(2)(a)(iii). The Sales Tax Authorities refused to deduct the sales from the taxable turnover and thereupon the respondent filed a petition under Article 226 of the Constitution. BOSE, J., held that by a change of the designation which appeared in the exemption section and by means of a simple merger of the functions of those departments with the newly designated department, the petitioner could not be deprived of the benefit of the exemption claimed under section 5(2)(a)(iii). On appeal by the State of West Bengal a preliminary objection was raised that the appeal was not maintainable: *Held*, that the decision of BOSE, J., exercising jurisdiction under Article 226 of the Constitution of India, 1950, came within the provisions of Clause 15 of the Letters Patent and the appeal was therefore maintainable: *Held further*, that the sales by the respondent could not be said to be sales to the Supply Department of the Government of India and could not therefore be excluded under section 5(2)(a)(iii) in calculating the taxable turnover of the respondent. The decision of BOSE, J., is a judgment pursuant to Section 108 of the Government of India Act, 1915, within the meaning of Clause 15 of the Letters Patent and the exercise of the powers under Article 226 of the Constitution is the exercise of Original Jurisdiction. DAS GUPTA, J.—Redesignation does not effect any real change and a sale to the Ministry of Industry and Supply would have the same effect in law as a sale to the Industries and Supplies Department. Creation of a new department is however something essentially different from re-designation. The newly created department could not even in part be the same as the old Supply Department. P. N. MOOKHERJEE, J.—Under the Statute a sale to the Supply Department of the Government of India qua such department would be protected and similarly also a sale to the Indian Stores Department of the Government of India qua such department, but not a sale to any other department of the Government of India even though such sale be for purposes of the said Supply Department or Indian Stores Department or for purposes for which these latter departments were authorised or intended to make purchases. A

mere re-designation of the department would not be sufficient to cause deprivation of the benefit of the statutory exemption but in the present case it was not a mere re-designation. Decision of BOSE, J., in *Shree Ganesh Jute Mills Ltd. v. Commercial Tax Officer and Others* [1952] (3 S.T.C. 175) reversed.—THE COMMERCIAL TAX OFFICER, AND ANOTHER *v.* SHREE GANESH JUTE MILLS LTD. [1953] 4 S.T.C. 298 (Cal.). On appeal to Supreme Court see the next para.

—*Held by* DAS, ACTG. C.J., BOSE, BHAGWATI and JAGANNADHADAS, JJ. (SINHA, J., dissenting). —In view of the ever expanding activities of the modern welfare State in different fields including that of trade and commerce, the Government departments are often entrusted with the performance of well-defined activities and are authorised to deal with the outside world and to enter into contracts of sale and purchase and other transactions in the same way as an ordinary person or company may do. Such Government departments can, therefore, be regarded as distinct units or quasi legal entities, at least for the particular purposes for which they are created. The Bengal Finance (Sales Tax) Act, 1941, by providing under section 5(2)(a)(iii) for the deductions of the sales made to the Indian Stores Department and the Supply Department of the Government of India from the taxable turnover treated those two departments as distinct entities. This exemption is the creation of the statute and must be construed strictly and cannot be extended to sales to other departments. The fact that the section was not amended until 1949 does not at all indicate that the Bengal Legislature intended to extend the benefit of the section to any but the departments specifically mentioned in the section. In 1948, the Government of India, Ministry of Industries and Supplies, placed with a jute mill, who was one of the appellants, an order for the supply of a large quantity of hessian cloth to meet an international obligation of the Government of India at a price stated to be exclusive of the Bengal sales tax. The Government of India also agreed to pay sales tax direct to the Government of West Bengal if ultimately sales tax was found payable in respect of the contract. The mill supplied the goods but they were assessed to Bengal sales tax. The mill claimed exemption under section 5(2)(a)(iii) and also contended that if any sales tax was at all payable, it was payable by the Government of India and not by them: *Held*, that the Department of Industries and Supplies which was subsequently re-designated as the Ministry of Industries and Supplies was not the same as the

Indian Stores Department or the Supply Department of the Government of India under a different name. The scope and volume of the work entrusted to the Department of Industries and Supplies was much wider and larger than that with which the two departments which it replaced had been charged. To extend the benefit of the statutory exemption to the sales made to the newly created Department of Industries and Supplies of goods not required for war purposes but for meeting international obligations would widen the scope of the exemption and impose greater loss of revenue on the State of West Bengal than what the Act by its language intended to do. Consequently sales tax was payable on the sales made by the mill. Decision of the Calcutta High Court in *Commercial Tax Officer and Another v. Shree Ganesh Jute Mills Ltd.* [1953] (4 S.T.C. 298) affirmed.—THE UNION OF INDIA AND ANOTHER v. COMMERCIAL TAX OFFICER, WEST BENGAL, AND OTHERS [1956] 7 S.T.C. 113 (S.C.).

Goods supplied on approval—Even in the absence of Rule 5(iv) of the rules made under the C.P. and Berar Sales Tax Act, section 24 of the Sale of Goods Act applies to cases of goods supplied "on approval". Consequently the sale price of goods supplied to customers "on approval" and returned by them as not approved should be excluded from the turnover.—*M. HASSANJEE AND SONS v. THE STATE* [1952] 3 S.T.C. 183.

Insurance charges to cover risk in transit of goods—*Whether part of turnover*.—Rule 6 of the Madras General Sales Tax Rules, 1959, which provides for deductions from turnover, covers only cases where but for the deduction the relative amount would be part of the price. The rule does not cover a case in which the amount claimed as not chargeable is not part of the price, for in that case no exemption is at all required. Insurance charges incurred to cover the risk in transit of the goods and not included in the price of goods but recovered from the customers cannot be viewed as for something done in respect of the goods and hence cannot form part of the turnover of the dealer.—*STATE OF MADRAS v. BALIGA LIGHTING EQUIPMENT (P.) LTD., GUINDY* [1969] 23 S.T.C. 154 (Mad.).

Licence fee for liquor, drug and opium shops.—The applicant, a businessman, obtained a licence for running a country liquor shop, a drug shop and an opium shop. He paid the licence fees for the said shops and an excise duty on the liquor obtained by him from the State Government.

He contended (1) that he could not be made to pay the sales tax in addition to the excise duty, and (2) that in calculating the sales tax the licence fee should have been deducted from the turnover: *Held*, (1) that as there is no prohibition in the Constitution against the imposition at one and the same time of an excise tax and a tax on sales, it was competent to the Legislature to levy an excise duty as also a sales tax; (2) that in calculating the sales tax the licence fee is not one of the amounts which is to be deducted from the gross turnover to get the net turnover.—*SHIVA DAYAL JAISWAL v. SALES TAX COMMISSIONER, U.P., LUCKNOW* [1951] 2 S.T.C. 192 (All.).

"Lot cooly charges" collected from customers of timber depots—*Whether form part of turnover*—*"Any sums charged for anything done by the dealer in respect of the goods"*—*Meaning of*.—Explanation (2) to section 2(r) of the Madras General Sales Tax Act, 1959, cannot be read in the abstract. It is an Explanation to the definition of "turnover" and it has to be read in the context and not *de hors* it. What could legitimately be brought to tax under the Act is the aggregation of the consideration for the transfer of property in the goods and service charges cannot be equated to the consideration for transfer of property in the goods. The words "any sums charged for anything done by the dealer in respect of the goods" in sub-clause (ii) in Explanation (2) to section 2(r) can only relate to something done by the dealer in respect of the goods at the time of or before its delivery which involves transfer of property in them for consideration. The charges paid on a percentage basis by customers for picking out or selecting timber from the timber depots described as lot cooly charges and shown separately in the bills cannot form part of the turnover of the dealer. [If the collection by way of lot cooly charges is in excess of the actual service charge incurred and paid by the assessee the question whether such excess can by any view form part of the price was left open.] *Sarju Pd. Pritam Lal v. Judge, Revisions, Sales Tax, U.P.* [1963] (14 S.T.C. 884) dissented from.—*SRINIVASA TIMBER DEPOT AND OTHERS v. DEPUTY COMMERCIAL TAX OFFICER, CHOLAI DIVISION, MADRAS-29, AND OTHERS* [1969] 23 S.T.C. 158 (Mad.).

Manufacturer of coconut oil—Deduction from turnover.—See COCONUT page 267 *supra*.

Manufacturer of groundnut oil—Claim for deduction under rules.—See GROUNDNUT *infra*.

Overhead charges—Sales tax is levied on the price of the goods and it has no concern with the

overhead expenses incurred by the dealer. Where a commission agent claimed certain overhead charges as deductions but the expenses were not charged for separately without including them in the price of the goods: *Held*, that they could not be claimed as deductions. The prices of the goods, which were either F.O.B. or C. & F. could not be split up for purposes of deduction.—*INDIA COFFEE AND TEA DISTRIBUTING COMPANY LTD. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 47 (Mad.).

Packing charges—Rule 5(1)(g)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules exempts from liability to tax all amounts falling under the head charges for packing and delivery and other such like services when specified and charged for by the dealer separately without including them in the price of goods sold. If an assessee has charged an inclusive price for both the tobacco and the packing materials when he sold the goods to the purchasers, he cannot claim the deduction.—*INDIAN LEAF TOBACCO DEVELOPMENT CO., LTD. v. THE STATE OF MADRAS (NOW ANDHRA)* [1954] 5 S.T.C. 354 (Mad.).

—In order to enable an assessee to claim deduction of the charges for packing under rule 5(1)(g)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, it is sufficient if he has billed the charges for packing separately from the price of the goods sold. If the assessee shows only an inclusive charge for packing, and that charge includes both labour and cost of packing materials, the claim for exemption can still be sustained on the basis of rule 5(1)(g)(ii). The department cannot, in such a case, split up the charges for packing further between charges for the labour involved in packing and charges for the cost of packing materials, whether on the basis of estimate or otherwise, and to assess the cost of the packing materials on the ground that there has been a sale of the packing materials. There was no occasion in *Krishna and Co., Ltd. v. State of Andhra* [1956] (7 S.T.C. 26) to consider whether an exemption could be claimed by the assessee under rule 5(1)(g)(ii).—*THE STATE OF MADRAS, In re* [1956] 7 S.T.C. 355 (Mad.).

—Charges for packing and delivery and other such like services contemplated by sub-clause (ii) of clause (g) of rule 5 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, have relation only to those expenses incurred in connection with the delivery of the article sold and have no reference to expenses incurred prior to the article reaching the place of business of the dealer. The benefit of rule 5 (g)(ii) cannot therefore be extended to cooly

charges paid by the dealer for the purpose of having the goods transported to the place of business.—*MOTILAL HARI PRASAD AND BROS. AND OTHERS v. THE STATE OF ANDHRA* [1959] 10 S.T.C. 20 (A.P.).

—*Sale of kerosene in sealed tins—Value of tins specified and charged for separately—Whether can be deducted from taxable turnover.*—In order to decide whether an amount obtained by a dealer from his purchaser is a charge for packing and delivery, the Court must first decide what is the item sold, and then find out whether the amount involved is a charge for the packing and delivery of that item. If what is sold is kerosene, then it has certainly to be packed in a container before delivery, and the charge for packing the kerosene in a container, if specified and charged for separately, will come within the ambit of rule 9 of the Kerala General Sales Tax Rules, 1963. If, on the other hand, what have been sold are sealed tins of kerosene, then the articles sold are packaged articles and no further packing in any container will be usual or necessary. In other words, the value of the packing when the article sold is a packaged article cannot be considered as coming within the expression “charges for packing and delivery” in rule 9 of the Rules.—*M. KUTTY HASSAN KUTTY v. SALES TAX OFFICER, PONNANI* [1967] 19 S.T.C. 278 (Ker.).

—See also the cases digested under **PACKING MATERIALS** *infra*, the decision of the Madras High Court in *DALMIA CEMENT (BHARAT) LTD. v. DEPUTY COMMERCIAL TAX OFFICER, LALGUDI, AND OTHERS* [1969] 23 S.T.C. 355 (Mad.) and the decision of the Supreme Court in *RAZACK & CO. v. STATE OF MADRAS* [1967] 19 S.T.C. 135 (S.C.).

Printing press—The owner of a printing press is entitled to deduct from his turnover during a year sums representing his bills for pamphlets printed by him but delivery of which has not been taken by the person who placed the order for printing.—*PUNAMCHAND v. THE STATE* [1951] 2 S.T.C. 14 (Nag.).

Purchase tax—Deduction of purchase price from sale turnover—Purchase of unginning cotton and sale of cotton seeds after ginning—Sale of cotton through commission agents at Bombay to foreign buyer resulting in export of goods—Right to deduction of purchase price under section 5(2)(vi), Punjab General Sales Tax Act (46 of 1948)—Constitution of India, Art. 286(1)(a).—*JANKI DASS BHAGAT RAM v. THE EXCISE AND TAXATION OFFICER, LUDHIANA, AND ANOTHER* [1965] 16 S.T.C. 542 (Punj.).

—Deductions—Cotton—Export of goods—Purchase of cotton by branch office in Punjab

and export by head office at Bombay—Right to claim deduction under section 5(2)(a)(vi), Punjab General Sales Tax Act (46 of 1948).—INTERNATIONAL COTTON (WASTE) CORPORATION, BOMBAY *v.* THE ASSESSING AUTHORITY, BHATINDA, AND OTHERS [1965] 16 S.T.C. 1045 (Punj.).

Railway freight—Where the assessee had agreed with the purchasers to charge them for packing and transport to the railway station in addition to the price, the charge being for things to be done by the assessee in respect of the goods before delivery thereof could be included in the sale price unless separately charged.—NEMKUMAR KESRIMAL *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1955] 6 S.T.C. 222 (Nag.).

—The clause “when such cost is separately charged” in item (i) of section 2(h) of the C.P. and Berar Sales Tax Act, 1947, has reference to cost not only of installation but also of freight or delivery because such cost may or may not form part of the sale price according to the terms of the contract between the parties. The same considerations apply equally to all the three kinds of cost contemplated in the definition. If the parties to the sale transaction agree that the cost of freight, or of delivery or of installation should be paid for separately, that cost should not form part of “sale price”. If, on the other hand, the parties agree that the “sale price” should be all-inclusive, *i.e.*, that the purchaser must bear all the cost up to the stage of installation of the goods purchased and on the responsibility of the seller, all those charges should be included in the “sale price”. The determining factor is not the terms in which the bill is made but the terms of the actual contract between the parties. An assessee quoted rates F.O.R. destination in his contract with his customer and despatched the goods “freight to pay”. The customer paid the freight separately to the railway company. The net amount billed to the customer by the assessee excluded the Railway Freight paid separately by the customer: *Held*, that in such circumstances the cost of railway freight could not be considered as “separately charged” for the purpose of the definition contained in section 2(h)(i).—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v.* ANWARKHAN MAHBOOB Co. [1956] 7 S.T.C. 197 (Nag.) affirmed by Supreme Court in 11 S.T.C. 790.

—The amount spent towards railway freight and collected as such by an assessee could be deducted from the turnover under section 2(h) of the Bihar Sales Tax Act, 1947.—TATA IRON AND STEEL Co., LTD. *v.* THE STATE OF BIHAR [1957]

8 S.T.C. 26 (Pat.) affirmed by Supreme Court in 11 S.T.C. 793.

—The effect of rule 5(1)(g) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is that if railway freight which is payable by the buyer separately, *i.e.* independent of the sale consideration, is paid by him into the hands of the seller who has undertaken to transport goods, it will not be regarded as part of the turnover, though it is included in the bill, and would be a permissible deduction. If, on the other hand, the price stipulated for a commodity is inclusive of the freight on the understanding that the goods would be delivered at the place of the buyer free of freight, it will form an integral part of the turnover.—TUNGABHADRA INDUSTRIES LTD., KURNOOL *v.* THE COMMERCIAL TAX OFFICER, KURNOOL [1955] 6 S.T.C. 259. On appeal to Supreme Court see below :—

—**Railway freight—When can be deducted from turnover.**—In order to claim the deduction under rule 5(1)(g), the freight should (i) have been specified and charged for by the dealer separately and (ii) the same should not have been included in the price of the goods sold. Where a dealer specified in the bill of sale the total amount of the price of the goods sold, then deducted from this amount the railway freight and showed the balance as the sum on which sales tax was computed: *Held*, that as the dealer had charged a price inclusive of the railway freight, he would not be entitled to the deduction under rule 5(1)(g).—TUNGABHADRA INDUSTRIES LTD., KURNOOL *v.* COMMERCIAL TAX OFFICER, KURNOOL [1960] 11 S.T.C. 827 (S.C.).

—**Railway freight paid—Whether cash discount.**—Where the applicants contended that the price of the goods sold by them included railway freight paid by them and therefore the price less the railway freight constituted the sale price for purpose of assessment under the Bombay Sales Tax Act, 1953, inasmuch as the amount of railway freight was cash discount within the meaning of section 2(14) of the Act: *Held*, that the applicants were not entitled to deduct the railway freight paid by them from their turnover. What was claimed by the applicants by way of deductions was not really the sale price less any sum allowed as cash discount according to trade practice but merely a concession which the applicants had shown to their customers.—INDIAN VEGETABLE PRODUCTS LTD. *v.* THE STATE OF BOMBAY [1960] 11 S.T.C. (T.D.) 39.

—**Railway freight and such other charges—Whether can be deducted from sale price.**—Where a

dealer in motor cars and spare parts had separately charged in his bills the railway freight and such other charges incurred in effecting delivery of the goods to his customers, he was entitled to deduct them from the "sale price" of the goods under section 2(h) of the Orissa Sales Tax Act, 1947.—*NABHI BROTHERS v. COMMISSIONER OF SALES TAX, ORISSA* [1960] 11 S.T.C. 605 (Ori.).

—*Railway freight paid by seller when purchasing goods charged separately in bill for sale price—Right to deduction.*—The plaintiff, a piece-goods merchant carrying on business in Tirunelveli, purchased goods from Bombay and Ahmedabad. When the plaintiff sold the goods to his customers he prepared bills showing the price which he paid at Bombay and also, as a separate item, the railway freight which he paid for getting the goods transported to Tirunelveli. The plaintiff contended that under rule 5(1)(g) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, he was entitled to claim exemption for the freight so paid at Bombay because he had charged it separately in the bills which he issued to his customers: *Held*, that the assessee's turnover for the purposes of the rules was the amount for which the goods were sold by him and as in respect of the sales effected by him, he did not pay any freight, he was not entitled to claim exemption in regard to the freight paid for the purpose of his purchase though it was taken into account for fixing the cost price.—*THE STATE OF MADRAS v. R. M. K. VISWANATHA PILLAI* [1957] 8 S.T.C. 601 (Mad.).

—*Freight included in price under agreement—Freight paid by buyer allowed as deduction in seller's bill—Whether can be included in turnover.*—Under the Andhra Pradesh General Sales Tax Act, 1957, and the Rules framed thereunder it is an essential condition for the exclusion of railway freight from the turnover of a dealer that it should be separately charged and not included in the price for which the goods are sold. Under an agreement entered into by the assessee-company with its stockists it was provided that the price of the products supplied to the stockists "shall be the current general gross list price charged by the company, free on rail, less such discount as may be fixed by the company from time to time; but the terms and the times of delivery and the payments therefor shall be in the absolute discretion of the company who may vary the same from time to time." Another clause in the agreement provided as follows:—"The conditions of any railway receipt shall be binding on the stockists and the date of delivery shall mean the date of the railway receipt and in the case of consignments sold free on rail destination, the

railway freight shall be nevertheless payable by the stockists at the destinations and the amount of freight shown on the railway receipt shall be deducted from the invoice of the company." The invoice prepared by the assessee complied with the terms of the latter clause in the contract. The assessee contended that the freight paid by the purchaser could not be included in the turnover of sales made by the assessee. The Sales Tax Appellate Tribunal by a majority of two to one upheld the contention of the assessee, but the Deputy Commissioner of Commercial Taxes revised other assessment orders, without following the majority decision of the Tribunal. On a revision petition by the department and a writ petition by the assessee against the Deputy Commissioner's orders: *Held*, that having regard to the recitals in the agreement entered into by the assessee with the stockists and the admitted course of conduct between the parties, the contract between the parties was to charge a price inclusive of railway freight, and therefore the department was right in including the railway freight in the turnover of the assessee. *Held further*, that it was not open to the Sales Tax Authorities to ignore a decision of the Sales Tax Appellate Tribunal even if it be only by a majority. *Tungabhadra Industries Ltd. v. Commercial Tax Officer* [1960] (11 S.T.C. 827) applied.—*THE STATE OF ANDHRA PRADESH v. HYDERABAD ASBESTOS CEMENT PRODUCTS LIMITED, HYDERABAD* [1968] 21 S.T.C. 267 (A.P.). On appeal to Supreme Court see below:—

—*Uniform catalogue price all over country—Goods supplied to outstation customers by rail, freight to pay—Freight payable deducted from catalogue price—Freight whether part of sale price—Whether to be included in turnover.*—To meet competition from other manufacturers the appellant-company maintained a uniform catalogue rate all over the country in respect of its manufactures. The company sent goods to outstation customers by rail under railway receipts with freight to pay. It made out an invoice at the catalogue rate and the customers paid the amount of the invoice less the freight for releasing the railway receipt and took delivery of the goods on payment of the railway freight. The result was that the net price received by the company was the catalogue rate less the railway freight charged in respect of the goods transported to the destination. In a sample invoice relied upon by the State the company had made out the invoice at the catalogue rate, deducted discount therefrom, charged sales tax on the balance and thereafter deducted the railway freight "to pay". The question was whether in assessing the turnover of the

appellant-company under the Andhra Pradesh General Sales Tax Act, 1957, for the year 1959-60, a deduction could be allowed of the sum of Rs. 57,970.37 in respect of railway freight on articles supplied to outstation customers. The High Court relied upon the terms of the contract with the customer and held that the goods were sold at the catalogue price and in paying the freight at the destination the purchaser acted on behalf of the company. Clauses (4) and (16) of the contract provided as follows: "(4) The price of the said productions supplied to the stockists shall be the current general gross list price charged by the company free on rail, less such discount as may be fixed by the company from time to time.....(16).....In the case of consignments sold free on rail destination, the railway freight shall nevertheless be payable by the stockists at the destinations and the amount of freight shown on the railway receipt shall be deducted from the invoice of the company": *Held*, (i) that under the terms of the contract there was no obligation on the part of the company to pay the freight and the price received by the company for the sale of the goods was the invoice amount less the freight; (ii) that the form in which the invoice was made out was not determinative of the contract between the company and its customers. If, apprehending that it may have to pay sales tax on the freight, the company collected sales tax on the freight, the true nature of the contract between the company and the purchasers could not on that account be altered. That the company might be liable to refund the amount of excess sales tax to its purchasers is a matter between the company and the purchasers and the State could not seek to levy tax on railway freight if it is not made part of the price; (iii) that the sum of Rs. 57,970.37 had to be deducted in computing the turnover. Civil Appeals Nos. 1184 and 1185 of 1968.—HYDERABAD ASBESTOS CEMENT PRODUCTS LTD. v. STATE OF ANDHRA PRADESH [1969] (23 S.T.C. Short Notes 9).

Rebate—Delivery of goods outside State—Deduction under section 7, Madras General Sales Tax Act.—Under section 7 of the Madras General Sales Tax Act, 1939, two conditions are necessary before the exemption can be invoked. One is that the terms of the contract should provide for delivery outside the State and secondly that in pursuance of such a contract the goods must have been (actually) delivered outside the State. The requirements of section 7 are even stricter and the exemption narrower than that embodied in the Explanation to Article 286(1)(a). In a case to which the latter provision is not attracted

the provisions of section 7 cannot apply.—A. M. MOHAMMED ISHOK v. THE STATE OF MADRAS [1955] 6 S.T.C. 230 (Mad.).

—Although a substantive right is given to an assessee by section 7 of the Madras General Sales Tax Act, 1939, it cannot be said that that substantive right stands by itself without being qualified by what is contained in rule 9. Therefore if an assessee claimed a rebate under section 7 he should make an application in Form No. VIII within three months of the delivery of the articles outside the State.—THE STATE OF MADRAS v. NALLAM JAGGIAH [1954] 5 S.T.C. 457 (Mad.).

—*Sale of goods for delivery outside State—Rebate under section 7—Necessity to comply with provisions of rule 9—Mere letter claiming rebate—Whether sufficient—Whether application in Form VIII necessary.*—In order to enable an assessee to claim the rebate under section 7 of the Madras General Sales Tax Act, 1939, he should conform to the procedure indicated in rule 9 of the Madras General Sales Tax Rules, 1939. It is only a strict compliance with the provisions of rule 9 that enables an assessee to claim the rebate, since the submission of the application in Form VIII is a pre-requisite to take advantage of the benefit conferred by section 7. A letter written by the assessee claiming the rebate and not containing particulars as to the names and addresses of persons to whom the goods were sold and the aggregate amount for which they were sold, does not fulfil the requirements of section 7 of the Act read with rule 9 of the Rules. *The Deputy Commissioner of Commercial Taxes v. Sri Pentapathy Lakshmana Swamy* [1956] (7 S.T.C. 560) followed.—THE STATE OF MADRAS (NOW THE STATE OF ANDHRA PRADESH) v. MESSRS KASAM AYUB [1959] 10 S.T.C. 190 (A. P.).

—If applications in Form 8 in the Madras General Sales Tax Rules, 1939, for rebate under section 7 of the Act are not sent in time the law and the rules do not provide any power to condone the delay and it will be illegal, improper and irregular to allow the rebate if those applications are not proved to have been sent in time. It will also be highly irregular for the Deputy Commercial Tax Officer to accept copies of Form 8 applications without recording reasons for not insisting on the production of the originals and passing an order allowing the rebate. In such a case the Commercial Tax Officer has the power under section 12(2) to revise the order of the Deputy Commercial Tax Officer.—STATE OF MADRAS v. MADURA KNITTING CO., LTD. [1959] 10 S.T.C. 155 (Mad.).

—See also the following cases :

(1) DEPUTY COMMISSIONER OF SALES TAX, SOUTH ZONE, QUILON *v.* TRAVANCORE RAYONS LTD. [1961] 12 S.T.C. 178 (Ker.); (2) M/s. MODI FOOD PRODUCTS *v.* COMMISSIONER OF SALES TAX, U.P. [1962] 13 S.T.C. 360 (All.); (3) AMRITSAR SUGAR MILLS CO. LTD. *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1966] 17 S.T.C. 405 (S.C.); (4) LORD KRISHNA SUGAR MILLS LTD. *v.* COMMISSIONER OF SALES TAX, U.P., LUCKNOW [1966] 18 S.T.C. 498 (S.C.) and (5) JAMUNA FLOUR AND OIL MILLS (PRIVATE) LTD. *v.* THE STATE OF BIHAR [1968] 22 S.T.C. 1 (Pat.).

Groundnut oil—Manufacturer of groundnut oil—Conditions for claiming rebate.—See *GROUNDNUT infra*.

Remissions given to purchasers—Whether can be deducted from total turnover.—*AMBICA MILLS LTD. v. STATE OF GUJARAT* [1964] 15 S.T.C. 367 (Guj.) affirmed by Supreme Court in [1967] 19 S.T.C. 12.

Return in assessment year of goods sold in previous year—*Sale price refunded by seller*—*Whether can be claimed as deduction*.—Rule 6(1)(b)(i) of the Andhra Pradesh General Sales Tax Rules, 1957, does not state that the deduction claimed for refund of price in regard to goods returned should be confined only to a particular period. A refund in the assessment year in respect of sales effected in the year previous to the assessment year would also be within the purview of that rule. It cannot be said that the rule is contemplating the taking into account of the return of goods only in the assessment year and not in regard to goods sold previously but returned in the assessment year. In interpreting the language of rule 6, the principle that there could be no tax in regard to a sale which has not been actively and effectively put through, though at first intended to be a sale, should be kept in mind. Mere hardships which crop up in applying the rule cannot stand in the way of correct construction of the rule. Further, anything which the language of the rule itself cannot convey, should not be imported into it, merely on the ground that either a lacuna exists or a hardship is caused in giving effect to the rule as it stands. The assessee engaged in the business of distribution of cinematograph films supplied, in the course of their business, publicity materials for the use of the exhibitors. Some of the publicity materials so sold in the year 1957-58 were actually returned in 1958-59 and the assessee refunded the sale price to the purchasers. The Appellate Tribunal held that rule 6(1)(b)(i) of the Rules applied to the case and

allowed deduction from the gross turnover the sum representing the sale price refunded to the purchasers: *Held*, that the Appellate Tribunal was right in allowing the deduction.—*STATE OF ANDHRA PRADESH v. VAUHINI PICTURES PRIVATE LIMITED, VIJAYAWADA-2, KRISHNA DISTRICT* [1962] 13 S.T.C. 847 (A. P.).

Sales to registered dealer—See REGISTERED DEALER *infra*.

Sales of medicines—*Production of certificates as required by rule 24 along with return*—*Whether necessary*—*Power to accept certificates in revision*.—Having regard to the relevant provisions of the Madhya Pradesh General Sales Tax Act, 1958, especially section 18, the requirement of rule 15(4) of the Madhya Pradesh General Sales Tax Rules, 1959, that the certificates and list of certificates as per rule 24 shall accompany the return is not mandatory. If the certificates are not filed along with the return all that can be said is that the return will be held to be incomplete and the Assessing Officer will call upon the dealer to produce the necessary documents. The dealer will thus have opportunity to produce the certificates before the assessment. In the assessment of sales tax for the year 1962-63, the petitioner claimed deduction under rule 24 of a certain turnover which pertained to sales of chemicals such as alum, chlorine etc. to the Public Health Department. The Assessing Officer came to the conclusion that the sales were not "sales of medicines" within rule 24 and therefore the question of producing at that time the certificates as required by that rule did not arise. The Additional Commissioner, in revision, without giving any finding regarding the correctness or otherwise of the view adopted by the Assessing Officer that the sales were not sales of medicines, held that the petitioner not having produced the certificates before the Assessing Officer was not entitled to get the benefit of rule 24. He also did not accept the certificates produced before him by the petitioner: *Held*, that having regard to the circumstances of the case the Additional Commissioner committed an apparent error in refusing to accept the certificates when produced before him. After admitting the certificates he should have decided the question whether the sales were such which qualified for the deduction under rule 24. *K. M. Chopra & Co., Jabalpur v. Additional Commissioner of Sales Tax, Indore* [1967] (19 S.T.C. 46; 1966 M.P.L.J. 1115) distinguished. —*NATIONAL TRADERS (INDIA), INDORE v. ADDITIONAL COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE, AND ANOTHER* [1968] 22 S.T.C. 86 (M.P.).

Service charges—Hotelier—Service charges realised from customers, at certain percentage over and above tariff—Whether part of sale price.—The assessee ran at Juhu Beach in Bombay a hotel which had both a boarding and a lodging establishment. The customers who came to the hotel were informed of the charges they had to pay for lodging with different amenities and boarding according to their taste. They were also informed that they had to pay service charges at ten per cent. of the tariff and sales tax at five paise per rupee. The assessee objected to the inclusion of the service charges in its gross turnover on the ground that they did not represent part of the sale price but were recovered from the customers for payment to the employees and for covering partly the breakages. The Tribunal found that the customers had no option but to pay the service charges which entirely depended on the food ordered and consumed by them: *Held*, that on the facts and in the circumstances of the case, the service charges constituted part of "sale price" as defined in section 2(29) of the Bombay Sales Tax Act, 1959, and could be included in the assessee's gross turnover.—*SUN-N-SAND HOTEL PRIVATE LTD. v. THE STATE OF MAHARASHTRA* [1969] 23 S.T.C. 507 (Bom.).

Town duty paid by dealer in cement and charged separately in bill—The applicants who were dealers in cement charged in their bills the price of cement at the controlled rate of Rs. 89-8-0 per ton plus sales tax at half anna per rupee and town duty at one rupee per ton paid by them at the time of the import of cement into the city of Bombay. The question was whether the Sales Tax Authorities were justified in adding to the sale price the town duty paid by the applicants: *Held*, that the view taken by the Sales Tax Authorities was correct.—*ASSOCIATED CEMENT COMPANIES LTD. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 373.

Transport charges—Whether transport charges and royalty can be deducted from gross turnover.—The petitioner, a dealer in iron ore, undertook to deliver the goods at the places mentioned by his customers who agreed to bear the transport charges. In the invoices given to the customers the price of the iron ore and transport charges were mentioned separately by the petitioner: *Held*, that under rule 2(1)(g) (in Schedule II) of the rules framed under the Mysore Sales Tax Act, 1948, the petitioner was entitled to deduct the freight charges from the gross turnover: *Held further*, that the royalty paid by the petitioner to the State Government was not excise duty paid to the Central Government and therefore the

petitioner was not entitled to deduct it from the gross turnover under rule (2)(1)(i). *Nabhi Brothers v. Commissioner of Sales Tax, Orissa* [1960] 11 S.T.C. 605) and *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] 11 S.T.C. 827) referred to.—*V. VEDAVYASACHARYA v. THE STATE OF MYSORE* [1962] 13 S.T.C. 465 (Mys.).

Transport charges—Under section 2(h) of the C. P. and Berar Sales Tax Act, 1947, as extended to Vindhya Pradesh if transport charges have not been separately charged to the consumer, they become part of the sale price and if they have been separately charged then the taxing authority cannot include them in the taxable turnover of the assessee. The question whether the transport charges were or were not separately charged is a question of fact.—*JAGAT PRASAD PATHAK v. THE ASSISTANT DISTRICT OFFICER OF SALES TAX, PANNA* [1960] 11 S.T.C. 64 (M.P.).

—Transport charges—Supply of firewood to factories from forest—Transportation charges specified and charged separately in bills—Whether allowable deduction—Place of contract or place of delivery of firewood—Whether material in determining question.—The petitioner supplied firewood to certain tile factories from a forest which was a few miles away from the place where the factories were situate. The petitioner's case was that the firewood had to be delivered at the factories under an agreement under which the factories had agreed to pay the petitioner the transportation charges. In the bills prepared by the petitioner the transportation charges were specified and shown separately and not included in the sale price. The petitioner claimed that the transportation charges were allowable deductions under rule 6(4)(f)(i) of the Mysore Sales Tax Rules, 1957. The petitioner did not produce before the Sales Tax Authorities or the Tribunal the agreement entered into between them and the purchasers. The Sales Tax Authorities and the Tribunal were of the view that since it was not proved that the sale had been completed in the forest and the delivery had been given to the purchasers inside the forest the deduction claimed by the petitioner could not be allowed: *Held*, that whatever be the place of contract, so long as in the invoices prepared by the petitioner freight was shown as an independent item and charged as such and it did not form part of the sale price specified in the invoices, the deduction claimed was allowable under rule 6(4)(f)(i). After making a best judgment assessment, it is not possible for the assessing officer to include another sum of money as some part of the turnover which had been suppressed.—*B. T. NARAYANA SHENOY v.*

THE STATE OF MYSORE [1969] 23 S.T.C. 411 (Mys.).

Weighing dues—Weighing dues charged separately from buyers in addition to the price of the goods sold and appropriated by an agent are not for services rendered by him as weighman but are part of the proceeds of sale. If the services are in respect of the goods and incidental to their being sold, the dues charged for them are to be included in the sale proceeds.—SARJU PD. PRITAM LAL *v.* JUDGE, REVISIONS, SALES TAX, U.P. [1963] 14 S.T.C. 884 (All.).

DELEGATED LEGISLATION

[(See also RULES)]

Assam Sales Tax Act, 1947, sec. 52(2)(i) and Rule 74—Section 52(2)(i) of the Assam Sales Tax Act, 1947, and rule 74 of the rules framed thereunder were not *ultra vires* the Legislature inasmuch as the Legislature has determined the forum of assessment, appeal and revision and has delegated to the administrative authorities only the power to fix fees payable on petitions, certificates and other matters and such delegation was neither unregulated nor a delegation of essential legislative function.—BHARAT AUTOMOBILES, GAUhati *v.* STATE OF ASSAM [1957] 8 S.T.C. 537 (Assam).

Whether Madras Act ultra vires on the ground of unconstitutional delegation—The law relating to delegated legislation is well-settled and may be summed up in two propositions: (1) The enunciation of policy is a matter exclusively within the competence of the Legislature and incapable of delegation to other bodies; (2) It is not unconstitutional to entrust to special bodies the carrying out of the policies declared by the Act and for that purpose to clothe them with authority to frame regulations within the framework of the Act. In the Madras Act what the legislature has done is merely to authorise the rule-making authorities to carry out the policies enunciated in the statute and to fill up the details. The rules themselves are to come into operation only after they are approved by a resolution of the House. Far from effecting self-effacement, the Legislature has retained complete control over the legislation and in fact it has exerted that control by introducing amendments of the Act from time to time. It must, therefore, be held that the Madras Act IX of 1939 and the Rules are not open to challenge on the ground of unconstitutional delegation.—V. M. SYED MOHAMED & CO., AND ANOTHER *v.* THE STATE OF MADRAS AND ANOTHER [1952] 3 S.T.C. 367 (Mad.). [On appeal to Supreme Court this point was not pressed and the Supreme Court

affirmed the decision of the High Court on the other points—See 5 S.T.C. 108.]

—See also K. G. RANGASWAMI CHETTIAR AND CO. *v.* THE GOVERNMENT OF MADRAS [1957] 8 S.T.C. 222 (Mad.).

Power to amend Schedule delegated to Government—Whether affects power of Legislature to amend Schedule—As regards the contention that the amendment of the Schedule [of the Central Provinces and Berar Sales Tax Act (XXI of 1947) by Amendment Act XVI of 1949] was defective because the procedure under section 6 was not followed, we have only to say that under section 6 there is a delegation of power to the State Government to amend the Schedule, for which certain conditions precedent have been laid down. That delegation does not rob the Legislature of its plenary power to amend the Act as and when occasion arises. It is not necessary that the delegation should be withdrawn before the Legislature itself can amend the Act. Further the conditions created for the exercise of the power by the delegate do not bind the Legislature. The Legislature could, and can, at any time amend the whole Act including the Schedule.—MADHYA PRADESH PAN MERCHANTS ASSOCIATION, SANTRA MARKET, NAGPUR *v.* STATE OF MADHYA PRADESH (SALES TAX DEPARTMENT) AND OTHERS [1956] 7 S.T.C. 99 (Nag.).

Proviso to section 3(4), Mysore Act—Validity—Whether delegates excessive powers to State Government—The proviso under section 3(4) of the Mysore Sales Tax Act, 1948, was not invalid or unconstitutional on the ground that there was delegation to the State Government of legislative power, which was not delegatable. Therefore the amendments made by the State Government from time to time to schedule II of the Act, relating to the determination of turnover of a dealer in groundnuts and groundnut oil, were not beyond its competence. *Edward Mills Co., Beawar v. The State of Ajmer* (A.I.R. 1955 S.C. 25) referred to.—B. SREERANGIAH CHETTY & SONS *v.* COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR AND ANOTHER [1962] 13 S.T.C. 314 (Mys.).

Section 11—Madras Commercial Crops Markets Act, 1933, delegating to State Government power to fix rate of tax without specifying limit—Whether unconstitutional—Some indication of a limit, or some principle with reference to which the executive should determine the rates, must be evident in a section of a law delegating the power of taxation, before the delegation should be held to be constitutional. As section 11 of the Madras Commercial Crops Markets Act, 1933,

does not prescribe any such thing, it is unconstitutional. *Kasturi Seshagiri Pai and Co. v. Deputy Commissioner of South Kanara* [1961] (12 S.T.C. 629); *Shanmugha Oil Mills v. Coimbatore Market Committee* [1960] (A.I.R. 1960 Mad. 160); *State of Madras v. Shanmugha Oil Mills* [1962] (75 L.W. 566); and *The Corporation of Calcutta and Others v. Sarat Chandra Ghatak and Another* [1959] (A.I.R. 1959 Cal. 704) relied on. *Pandit Banarsi Das Bhanot and Others v. State of Madhya Pradesh and Others* [1958] (9 S.T.C. 388; A.I.R. 1958 S.C. 909) distinguished.—*M. T. KUMARAN & Co. v. SECRETARY, MALABAR MARKET COMMITTEE* [1964] 15 S.T.C. 634 (Ker.).

—See also *GANGA RAM SURAJ PARKASH v. THE STATE OF PUNJAB* [1963] 14 S.T.C. 476 (Punj.) *NABHA RICE AND OIL MILLS v. THE STATE OF PUNJAB AND OTHERS* [1963] 14 S.T.C. 559 (Punj.) at page 320 *supra*.

—Provision delegating power to State Government to fix rates without guidance—Whether void—Subsequent retrospective amendment fixing maximum at 2 pice per rupee—Validity. —*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.).

—*Power of Government to issue notification or to frame rule retrospectively—Reassessment—Delegation by Commissioner of power to make reassessment—Issue of notification conferring jurisdiction on officer retrospectively—Legality—Delhi Sales Tax Rules, 1951, Rule 78—Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, Sec. 11-A.*—Unless the power to legislate conferred on an executive body by the Legislature expressly mentioned that such power could be exercised retrospectively, it could only be exercised prospectively. Therefore the power conferred on the Government to issue notifications, if couched in general language, could unless it was expressly stated that the same could be exercised retrospectively, only be exercised prospectively. Rule 78 of the Delhi Sales Tax Rules, 1951, provided that the Commissioner should not delegate any powers other than those specified in columns 2 and 3 of the First Schedule. The power of the Commissioner to make reassessments under section 11A of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, was not included in that Schedule, but the Commissioner had delegated his powers under that section to the Sales Tax Officer who made certain orders of reassessment on the petitioners. After the filing of the writ petition challenging the legality of the orders of reassessment made by the Sales Tax Officer, the Chief Commissioner issued a notification amending the First Schedule with retrospective effect thereby validating the orders made by the Sales Tax Officer, which at the

time he made them, were null and void for want of inherent jurisdiction: *Held*, that the Chief Commissioner could not issue such a notification; even in exercise of rule-making power he could not promulgate a rule which by having retrospective operation could have the effect of validating quasi-judicial orders which were altogether null and void when made. *Poornachenna Basavayya & Sons v. The State of Andhra Pradesh* [1961] (12 S.T.C. 634) distinguished.—*AGGARWAL WOOL AND THREAD CO. AND ANOTHER v. SALES TAX OFFICER AND ASSESSING AUTHORITY, WARD No. 10, NEW DELHI, AND ANOTHER* [1966] 18 S.T.C. 405 (Punj.).

Power to fix rates—Purchase tax—Section 3-D, U.P. Act, giving power to State Government to select goods and fix rate of tax—Validity—Whether amounts to unconstitutional delegation of legislative power—Section and notification issued under that section—Whether infringe Article 14, Constitution.—The power conferred upon the State Government under section 3-D of the U.P. Sales Tax Act, 1948, to select the goods to be subjected to purchase tax and the rates at which they are to be taxed does not amount to unconstitutional delegation of legislative power. Section 3-D and Notification No. ST-7122/X-900(16)/64 issued by the State Government on 1st October, 1964, under that section also do not infringe Article 14. Although there is no provision in section 3-D or any other section that the notification issued by the State Government must be laid before the Legislature within a certain time and that it can be amended by the Legislature, it does not mean that the power conferred upon the State Government is so uncontrolled as to amount to unconstitutional delegation. If the State Government issues a notification contrary to the legislative policy the Legislature can always amend section 3-D by taking away the power or restricting it. The provision that a purchase tax shall be payable on certain goods to be selected by the State Government and at the rates fixed by it is complete legislation in itself. It is carried into effect on the State Government's issuing a notification specifying the goods and the rates and is an instance of conditional legislation. So long as no notification is issued by the State Government no tax is to be paid but it does not follow that there has been no imposition of tax. The tax is imposed *in presenti* but its assessment and payment are postponed so long as the State Government does not issue a notification. Where a dealer failed to file a return of the first purchase of oil-seeds and to deposit the tax thereon and the Sales Tax Officer thereupon assessed the dealer to purchase tax under rule 41(3) of the U.P. Sales Tax Rules, 1948, without giving any

opportunity to the dealer to be heard: *Held*, that the Sales Tax Officer did not act illegally and no question of infringement of natural justice principle arose in the case. *Maheshwari Devi Jute Mills v. The State of Uttar Pradesh* [1966] (17 S.T.C. 106) distinguished.—*SRI KAMLA DAL MILLS v. STATE OF U.P. AND ANOTHER* [1966] 18 S.T.C. 204 (All.).

—Essential goods—Edible oils—Provision delegating power to State Government to fix rates without guidance—Whether void—After enactment of Central Act 52 of 1952 retrospective amendment of provision fixing maximum at 2 pice per rupee—Validity—Subsequent notification withdrawing exemption to certain dealers of edible oils—Whether effective—Whether Amendment Act and notification invalid for not being reserved for assent of President.—*THE STATE OF PUNJAB v. SANSARI MAL PURAN CHAND* [1968] 21 S.T.C. 91 (S.C.).

Parliament—Legislation by reference and adoption of State Law—Validity of rule 5(7), Central Sales Tax (Madras) Rules, 1957—Power of officer to assess escaped turnover under section 9(3), Central Act.—Sub-rule (7) of rule 5 of the Central Sales Tax (Madras) Rules, 1957, at least in so far as it provided for limitation and determination of escaped turnover by best judgment is in excess of the rule-making power and the sub-rule, as a whole, is therefore invalid. But section 9(3) of the Central Sales Tax Act, 1956, would enable the officer to invoke those powers which he has under the Madras General Sales Tax Act, 1959, in assessing turnover which has escaped assessment in any year. While it is competent for the Parliament to adopt the existing provisions of a local law as part of the Central legislation without repeating those provisions in the Central Act, it cannot make a law adopting the provisions of a local law which did not exist at the time. But in applying this principle the court should look at the substance and not the form of the matter. Section 16 of the Madras General Sales Tax Act, 1959, substantially re-enacted the provisions under the Madras General Sales Tax Act, 1939, relating to assessment of escaped turnover and the period of limitation for exercising that power, and the subject-matter of section 16 was not something which the Parliament had not applied its mind to when it enacted section 9(3). Therefore section 9(3) is not unconstitutional.—*Haji J. A. Kareem Sait v. Deputy Commercial Tax Officer, Mettupalayam* [1966] 18 S.T.C. 370 (Mad.).

Power to adopt statute of another Legislature—See pages 317-318 *supra*.

Power of rule-making authority to fix percentage of turnover as representing cost of materials in building contracts—Validity of Rule 28, Delhi Sales Tax Rules, 1951.—*S. B. GURBAKSH SINGH v. SALES TAX OFFICER, WARD No. 5, AND ANOTHER* [1966] 18 S.T.C. 500 (Punj.).

Rule prescribing period of limitation when there is no power in the Act—Where an Act does not provide for limitation with reference to a particular matter and the delegation of the power to make rules is conferred by a section of the Act, which does not, expressly or impliedly, relate to the power of prescribing time, the authority to which the power is delegated cannot make a rule prescribing limitation. Therefore as the proviso to section 4 of the Madras General Sales Tax Act, 1959, does not prescribe any limitation for refund of tax levied on declared goods, rule 23(3)(i) of the Madras General Sales Tax Rules, 1959, prescribing a period of limitation for that refund is invalid and *ultra vires* the State Government.—*P. THIRUMURTHI CHETTIAR v. THE STATE OF MADRAS, AND ANOTHER* [1968] 21 S.T.C. 489 (Mad.).

—See also Advance Payment of Tax page 10 *supra*.

DELIVERY

“Actual delivery” in Article 286, Constitution of India, meaning of—See Cases Digested under CONSTITUTION OF INDIA, ARTICLE 286(1)(a) and (2), page 345 to 383.

DELIVERY ORDER

Delivery order—Whether actionable claim or document of title.—A delivery order is recognised as a document of title. Where the manufacturers gave the delivery order to a party for valuable consideration and this delivery order was subsequently sold in succession for valuable consideration to different parties, the valuable consideration in each transaction was for property in the goods and not for a beneficiary right. The manufacturers would have no property at all in the goods after they had issued the delivery order for valuable consideration. Their position would be that of a bailee for the real owner.—*HASTINGS MILL LTD. v. STATE OF WEST BENGAL* [1956] 7 S.T.C. 503.

—Delivery order—Endorsement—Whether sale of goods.—The assessee carrying on business as wholesale dealers in gunnies entered into an agreement with a jute mill for the purchase of gunnies at a specified rate which were to be delivered on a particular date and they paid a certain sum by way of advance to the mill. Before the

date fixed for the delivery, the assessee entered into separate contracts with third parties for the sale of the goods contracted to be purchased by the assessee from the mill. The assessee also endorsed over the delivery orders, which they received from the mills. In pursuance of such contracts of sale, the third parties took delivery of the goods direct from the mill, paying the balance of the price to the mill on the strength of mill letters (delivery orders) passed on to them by the assessee. The question was whether the transactions between the assessee and the third parties constituted sales which were liable to sales tax: *Held*, that the transactions entered into by the assessee and the mill on the one hand, and the assessee and third parties on the other, constituted two different and distinct sales. The latter transaction was not an assignment of a contract but a regular transfer of the right in the goods for a higher consideration which contained all the ingredients of a sale of goods and it was therefore liable to sales tax.—*SRI BAYYANNA BHIMAYYA AND OTHERS v. THE GOVERNMENT OF ANDHRA* [1957] 8 S.T.C. 167 (A.P.) affirmed by Supreme Court in [1961] 12 S.T.C. 147 (S.C.).

—A delivery order is a document of title to goods and the possessor of such a document has the right not only to receive the goods but also to transfer it to another by endorsement or delivery. The appellants, dealing in gunnies, entered into contracts with two mills agreeing to purchase gunnies at a certain rate for future delivery and the mills agreed to deliver the goods to third parties if requested by the appellants. The mills, however, did not accept the third parties as contracting parties but only as agents of the appellants. Before the date of delivery, the appellants entered into agreements with third parties, by which they charged something extra from the third parties and handed over to them the delivery orders, which were known as *kutchas* delivery orders. The mills delivered the goods against the *kutchas* delivery orders along with an invoice and a bill and collected the sales tax from the third parties. The appellants contended that there was only one transaction of sale between the mills and the third parties and that the transaction between the appellants and the third parties could not be treated as a sale: *Held*, that there were two transactions of sale and sales tax was therefore payable at both the points. At the moment of delivery by the mills to the third parties, there were, in effect, two deliveries, one by the mills to the appellants, represented, in so far as the mills were concerned, by the appellants' agents, the third parties, and the other, by the

appellants to the third parties as buyers from the appellants. These two deliveries might synchronise in point of time, but were separate, in point of fact and in the eye of law. Decision of the High Court of Andhra Pradesh at Hyderabad in *Sri Bayyanna Bhimayya and Others v. The Government of Andhra* [1957] (8 S.T.C. 167) affirmed.—*BAYYANNA BHIMAYYA & SUKHDEVI RATHI v. THE GOVERNMENT OF ANDHRA PRADESH* [1961] 12 S.T.C. 147 (S.C.).

Delivery order—Whether document of title—Endorsement of delivery order—Whether sale of goods.

—A jute mill manufacturing gunny bags and storing them collectively in its godowns put the gunny bags into the market through guaranteed brokers. Intending purchasers entered into contracts with the mill through the brokers but the gunny bags were not earmarked against any particular contract. The mill sent the delivery order with the hundi to the purchaser for payment of the price of the gunnies and on payment of the hundi, the purchaser received the delivery order, which was a letter of authorisation to the manager of the mill to deliver the goods against certain contracts. The delivery order could be endorsed by the holders any number of times and when it was presented to the mill by the ultimate holder the gunnies were separated from the joint stock and then delivery was given by the mill. The question was whether the endorsement of the delivery orders in favour of third parties was a sale of goods within the meaning of the Madras General Sales Tax Act, 1939: *Held*, that as no property in the goods passed from the mill to the buyer till the goods were separated from the joint stock, the delivery orders were not documents of title and as the buyer himself had no title to the goods, the endorsement of delivery orders in favour of third parties could not be sale of goods within the meaning of the Act. *Bhimayya v. Government of Andhra* [1957] (8 S.T.C. 167; 1957 A.L.T. 58) distinguished.—*THE STATE OF ANDHRA v. KOLLA SREE RAMAMURTHY* [1958] 9 S.T.C. 547. Reversed by the Supreme Court in [1962] 13 S.T.C. 522—See below.

—The respondent was a dealer in gunny bags manufactured by two mills. The contracts for the purchase of the bags from the mills were entered into for the respondent by brokers who sent him "bought notes" setting out the terms upon which the purchases had been effected from the mills. The contracts specified the description of the goods, the manner of their packing and the time of delivery. As soon as a contract was handed over to the respondent, he made a deposit of Rs. 15 per bale. The mills then issued a "delivery order" directing the delivery

of the goods as per the contract and this was handed over to the respondent on his honouring a hundi for the value of the goods. By the time the delivery order was issued there were sufficient gunny bags in the godown of the mills and it was open to the respondent to take delivery of the bags. The respondent however endorsed the delivery order and this passed through several hands before the ultimate holder of the delivery order presented it to the mills and obtained delivery of the bags from the mills. The High Court held that the transactions entered into by the respondent with third parties were mere transfers of delivery orders and not "any sale of goods": *Held*, that the transactions were sales of goods and were therefore liable to sales tax under the Madras General Sales Tax Act, 1939. *State of Andhra (Now Andhra Pradesh) v. Kolla Sree Ramamurthy* [1958] (9 S.T.C. 547) reversed. *Bayyanna v. Government of Andhra Pradesh* [1961] (12 S.T.C. 147; A.I.R. 1961 S.C. 1065) referred to. *Butterworth v. Kingway Motors Ltd.* ([1954] 2 All. E.R. 694) applied.—THE STATE OF ANDHRA PRADESH *v.* KOLLA SREE RAMAMURTHY [1962] 13 S.T.C. 522 (S.C.).

DEPOSIT OF TAX

Deposit of tax—Appropriation by State—Sales inside and outside State—Collection of tax on all sales—Amount deposited towards tax appropriated by Sales Tax Authorities towards liability under section 8-A(4), U.P. Act, and assessee ordered to deposit further amount towards tax—Legality of order—Rule of appropriation—Applicability to sales tax debts.—The assessee selling sugar and rab both inside and outside State had realised from its customers for the assessment year 1950-51 sales tax in respect of all the sales. The assessee had elected to be assessed to sales tax on the turnover of the assessment year and had deposited in the treasury the amount representing the tax due in respect of sales made inside the State. The Sales Tax Authorities and the Judge (Appeals) held that the amount deposited should be appropriated against the liability of the assessee under section 8-A(4) of the U.P. Sales Tax Act, 1948, and called upon it to deposit a further sum towards its tax liability. The assessee deposited the further sum demanded and proceeded in revision before the Judge (Revisions) contending that the Sales Tax Authorities were not entitled to make the appropriation and that it was only liable to deposit towards the tax liability a sum representing the difference between the amount determined as sales tax and the amount already deposited by it. The Judge (Revisions) accepted the contention of the assessee and ordered a refund: *Held*, (1) that the rule codified in sections 59 and 60 of the

Indian Contract Act, 1872, extends to statutory debts owed to the State, unless there is some provision to the contrary in the statute under which the debt comes into existence; (2) that the amount deposited towards the tax liability and the amount liable to be deposited under section 8-A(4) represented debts owed by the assessee to the State and there was no provision of law which justified the Sales Tax Authorities to appropriate the amount deposited towards tax against the liability under section 8-A(4); (3) that there is ample power in the revising authority in the exercise of its jurisdiction under section 10(3) to make an order of refund in cases not covered by the provisions of section 10(5). The language of section 10(3) is wide and the power is not confined merely to revising an order passed by the assessing authority or the appellate authority but would also include the power to pass consequential orders. The Judge (Revisions) had, therefore, jurisdiction to make the order of refund, which he did, under section 10(3) in favour of the assessee; (4) that the mere fact of payment by the assessee consequent to a demand made by the Sales Tax Authorities under colour of law would not justify the application of the doctrine of acquiescence, because section 8 provided for the issue of a notice of demand calling upon the assessee to pay the tax assessed and failure or omission on the assessee's part to comply with the demand exposed the assessee to penal proceedings. When a statute contains a provision for imposing a penalty in case of non-compliance with an order or direction issued under it, it cannot be said that such compliance amounts to acquiescence.—COMMISSIONER OF SALES TAX, UTTAR PRADESH *v.* LORD KRISHNA SUGAR MILLS, LTD. [1952] 15 S.T.C. 335 (All.).

DIARIES

Diaries—Whether books and exempt from sales tax.—See *INDUSTRIAL AND COMMERCIAL SERVICE, ALLAHABAD v. COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW* [1963] 14 S.T.C. 299 (All.).

DIESEL ENGINES

Diesel engines sold can only be used in motor vehicles with the assistance of conversion kits—Whether components of motor vehicles.—An article is a component of another when it forms a constituent part of the other and is essential for completing it. That presumes necessarily that the article as such must in its condition and functioning be capable of use in the other. Where the diesel engines sold by the petitioner could ordinarily be used for other purposes and it was only with the assistance of conversion kits

that they could be used in motor vehicles, the diesel engines sold could not be said to be component parts of motor vehicles within the meaning of Notification No. ST-369/X-923-48, dated 1st July, 1948. *Commissioner of Sales Tax v. Pritam Singh* [1968] (22 S.T.C. 414) applied.—*AGARWALA BROTHERS v. COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW* [1969] 23 S.T.C. 306 (All.).

DIESEL OIL

Diesel oil—Whether motor spirit.—"Diesel oil" is "motor spirit" as defined in section 2(c) of the C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938. The word "any" in section 2(c) means "no matter what". It is impossible to give it the meaning "each and every". The C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, cannot be deemed to have been repealed by the C.P. and Berar Sales Tax Act, 1947.—*A. AHMADJI BHAI AND ANOTHER v. STATE OF MADHYA PRADESH AND ANOTHER* [1953] 4 S.T.C. 89 (Nag.).

DISCONTINUANCE OF BUSINESS

Cancellation of certificate of registration and assessment of "stock of goods remaining unsold"—Under section 18A of the Bombay Sales Tax Act, 1946, tax is levied only on stock of goods remaining unsold at the time of the cancellation of the certificate of registration. The expression "stock of goods remaining unsold" refers to goods which would have been sold in the ordinary course of business but for the suspension of the business and the cancellation of the certificate. The plant, machinery etc., which a company used to manufacture its goods for the purpose of sale cannot be considered to be "stock of goods remaining unsold" at the time of the cancellation of the certificate of registration within the meaning of section 18A. A company engaged in the manufacture and sale of cement articles was registered as a dealer under the Bombay Sales Tax Act, 1946. The company went into liquidation and intimated to the Sales Tax Authorities that it had stopped its business and therefore its certificate of registration should be cancelled. The Sales Tax Authorities cancelled its certificate of registration and assessed it to tax under section 18A of the Act on a certain sum representing the value of plant, machinery, laboratory apparatus, finished goods and raw materials: *Held*, (1) that in respect of goods purchased by the company which were intended for resale or which were raw materials out of which finished goods intended for resale were turned out by the company the levy of tax under section 18A was proper and that the

section in imposing a tax on these goods was *intra vires* the legislature; (2) that section 18A did not impose any liability upon the company to pay sales tax on plant, machinery, other equipments and laboratory apparatus and therefore the levy of tax on these goods was not proper.—*THE DECCAN CEMENT PRODUCTS CO., LTD. v. THE STATE OF BOMBAY AND ANOTHER* [1957] 8 S.T.C. 100 (Bom.).

Discontinuance of business—Liability of members during period when business was carried on.—Under section 33 of the Madhya Pradesh General Sales Tax Act, 1958, in the case of a joint Hindu family, when the business of that family is discontinued, all its members are made liable, though the tax liability is confined to the period during which the joint family business was carried on. But, in that case, the assessee would be the joint family as such, and not the business started by some of the members of the family, after the discontinuance of the joint family business. Though the individual members can be assessed as dealers with respect to the joint family business, as their liability is joint and several, they should be assessed *qua* members of the joint Hindu family for the past business and not as dealers doing business of their own subsequent to the discontinuance.—*SHRI KISHANCHAND GOVINDRAM v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1967] 19 S.T.C. 465 (M. P.).

Dissolution—Assessment of firm after dissolution and recovery of tax from previous partners—*Legality*.—See *Firm infra*.

DISCRIMINATORY LEGISLATION

General principles—Taxation laws must also pass the test of Article 14. But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation.—*EAST INDIA TOBACCO CO. v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 529 (S.C.).

—Burden of proof.—It is for the person who assails a legislation as discriminatory to establish

that it is not based on a valid classification and this burden is all the heavier when the legislation under attack is a taxing statute.—*EAST INDIA TOBACCO CO. v. STATE OF ANDHRA PRADESH* [1942] 13 S.T.C. 529 (S.C.).

—There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional to establish it beyond all doubt.—*EAST INDIA TOBACCO COMPANY v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1962] 13 S.T.C. 529 (S.C.).

—*Validity of provision on the ground of discrimination—Whether Commissioner can raise.*—The argument based on unconstitutionality of a provision under Article 14 of the Constitution is not open to the Commissioner of Sales Tax who wants to enforce the provision; it is open only to one who would be aggrieved by the enforcement of it. If the correct interpretation of a provision would render it unconstitutional the Court will have to strike it down and cannot give a forced interpretation with a view to save it.—*KANPUR DEVELOPMENT BOARD v. COMMISSIONER, SALES TAX, U.P.* [1963] 14 S.T.C. 493 (All.).

Central Sales Tax Act—Whether contains discriminatory provisions and are therefore invalid.—*EAST INDIA SANDAL OIL DISTILLERIES LTD., AND OTHERS v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 79 (A.P.).—See the following cases:

(1) *M.A. ABBAS & Co. v. STATE OF MADRAS* [1962] 13 S.T.C. 433 (Mad.); (2) *LARSEN AND TOUBRO LTD., MADRAS-2, AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD, II DIVISION, MADRAS-2, AND OTHERS* [1967] 20 S.T.C. 150 (Mad.); (3) *THE STATE OF MADRAS v. N. K. NATARAJA MUDALIAR* [1968] 22 S.T.C. 376 (S.C.) and (4) *SITALAKSHMI MILLS LTD., TIRUNAGAR, MADURAI, AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, No. IX, TEPPAKULAM NEW COLONY, MADURAI, AND OTHERS* [1968] 22 S.T.C. 436 (Mad.).

Classification—Tax on sellers in some cases and purchasers in other cases.—In *V. M. SYED MOHAMED & Co., AND ANOTHER v. THE STATE OF MADRAS AND ANOTHER* [1952] (3 S.T.C. 367) it was contended that the provisions of the Madras General Sales Tax Act, and the rules framed thereunder were discriminatory, in that they imposed sales tax in some cases on the purchasers while levying it on the sellers in other cases, that there was no rational basis for this differentiation and that it was repugnant to Article 14 of the

Constitution and, therefore, void. The High Court after a discussion of the case law on the point rejected this contention and held that the Act was not invalid on that ground.

—See also the case of *C. GOVINDARAJULU NAIDU & Co. v. STATE OF MADRAS AND ANOTHER* [1952] (3 S.T.C. 405) where *Syed Mohamed & Co.'s* case was followed. On appeal to Supreme Court the decision in *Syed Mohamed & Co.'s* case was affirmed. See below:—

—The guarantee of equal protection of laws does not require that the same law should be made applicable to all persons. Article 14 of the Constitution does not forbid classification for legislative purposes, provided that such classification is based on some differentia having a reasonable relation to the object and purpose of the law in question. There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced. As the appellants had not proved beyond all doubt that the Madras General Sales Tax Act, 1939, arbitrarily discriminates between different persons similarly circumstanced, it had not become void under Article 14 of the Constitution.—*V. M. SYED MOHAMMAD & COMPANY AND ANOTHER v. THE STATE OF ANDHRA AND OTHERS* [1954] 5 S.T.C. 108 (S.C.).

—A person who is subjected to a tax cannot, if all persons similarly placed are similarly taxed, complain of discrimination.—*ADARSH BHANDAR v. SALES TAX OFFICER, ALIGARH* [1957] 8 S.T.C. 666 (F.B.).

Classification into licensed and unlicensed dealers—The imposition of sales tax on licensed dealers under rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules does not contravene Article 14 of the Constitution. A classification of merchants into those who take out licences and those who do not is one resting on a rational basis and must be upheld.—*THE STATE OF MADRAS v. K. H. CHAMBERS LTD., AND OTHERS* [1955] 6 S.T.C. 157 (Mad.).

—It cannot be said that the classification embodied in sections 5 and 6A of the Act between licensed dealers in hides and skins and unlicensed dealers in the same commodity is unreasonable or has no relation to the object sought to be achieved. The classification is valid and therefore the provisions of the Act do not offend Article 14 of the Constitution.—*V. M. SYED*

MOHAMED AND COMPANY v. THE STATE OF ANDHRA [1956] 7 S.T.C. 465 (Andh.).

—*Unlicensed dealers escape taxation because of imperfect draftsmanship—Taxation of licensed dealers—Whether amounts to discrimination.*—Imperfections of language and inapt draftsmanship by reason of which those, whom the Legislature or the rule-making authority desires to rope in, find themselves free cannot constitute any basis on which a complaint of discrimination could be rested. The assessee who were licensed tanners contended that the consequence of the decisions in *Syed Mohamed & Co. v. State of Madras* [1952] (3 S.T.C. 367) affirmed on appeal by the Supreme Court in [1954] (5 S.T.C. 108), *Hajee Abdul Shukoor & Co. v. State of Madras* [1955] (6 S.T.C. 352) and *Noor Mohamed and Co. v. State of Madras* [1956] (7 S.T.C. 792) was that dealers in hides and skins who took out licences were made liable to tax whereas those who failed to take out the licence escaped tax liability and that this amounted to an illegal or improper discrimination in favour of unlicensed dealers and therefore the taxation of licensed dealers was void under Article 14 of the Constitution: *Held*, (1) that the Legislature intending in fact to confer the benefits of single point taxation on licensed dealers, while denying them to those who did not take out a licence, actually contrived to confine the taxation to licensed dealers, leaving out altogether those unlicensed from the scope of the taxing measure, a result which was unintended by the Legislature and the rule-making authorities and was due to the inapt machinery and inappropriate language employed in framing the rules and that such a consequential effect could not be complained of as a discrimination or a denial of the equal protection of the laws guaranteed by Article 14; (2) that as the number of unlicensed dealers during the relevant years formed a wholly insignificant proportion to the total number of dealers, the inequality produced was not palpable and the complaint of discrimination was therefore without justification.—*V. S. K. ADHI CHETTIAR SURAVELU CHETTIAR v. STATE OF MADRAS* [1957] 8 S.T.C. 274 (Mad.).

—The classification of dealers into licensed and unlicensed embodied in sections 5 and 6-A of the Madras General Sales Tax Act, 1939, is valid and does not offend Article 14 of the Constitution.—*S. ALLAUDDIN SAHIB & Co., CUDDAPAH v. THE COMMERCIAL TAX OFFICER, CUDDAPAH* [1958] 9 S.T.C. 14 (A.P.).

—The provisions of section 9 of the Madras General Sales Tax, Sales of Motor Spirit Taxation and Entertainments Tax (Amendment) Act, 1957,

were not obnoxious to Article 14 of the Constitution.—*V. GURUVIAH NAIDU AND BROTHERS v. THE STATE OF MADRAS, AND ANOTHER* [1958] 9 S.T.C. 145 (Mad.).

—Licensed and unlicensed dealers—Single point and multi-point tax—Whether provisions of Act discriminatory.—*H. H. NAEEMS & Co. v. STATE OF MADRAS* [1964] 15 S.T.C. 269 (Mad.).

—A licensing system is a reasonable restriction upon the freedom guaranteed by Article 19(1)(g). The power to levy a tax extends to the enactment of all incidental provisions for ensuring the collection or preventing the evasion of tax. A classification germane to the purpose of the enactment is not prohibited by Article 14 of the Constitution. If such a classification has a real connection and is necessary to carry out the purpose of the Act, the classification cannot be attacked as discriminatory. The classification of dealers as licensed and unlicensed is necessary for the purpose of the Act and has an integral connection with its underlying policy. Therefore the distinction between licensed and unlicensed dealers and the different rates of tax imposed upon the transactions by them are not hit by Article 14 of the Constitution.—*A. MOHAMMED ZACHERIA AND Co. v. THE STATE OF MADRAS* [1965] 16 S.T.C. 1049 (Mad.).

Classification of dealers in articles of food and drink sold in hotel, restaurant or boarding house—Whether discriminatory.—See the following cases:—(1) *A. R. KRISHNA IYER AND ANOTHER v. THE STATE OF MADRAS* [1956] 7 S.T.C. 346 (Mad.), (2) *KADIYALA CHANDRAYYA v. THE STATE OF ANDHRA* [1957] 8 S.T.C. 33 (A.P.), (3) *B. SEETHARAMIAH v. ASSISTANT SALES TAX OFFICER, BANGALORE CITY, AND OTHERS* [1957] 8 S.T.C. 611 (Mys.), (4) *K. M. GOEL, PROPRIETOR, BOMBAY ANAND BHAVAN v. THE STATE OF MADRAS* [1961] 12 S.T.C. 527 (Mad.), (5) *STATE OF ANDHRA PRADESH v. SRI CHINTALAPUDI RAMACHANDRA ROW AND OTHERS* [1962] 13 S.T.C. 697 (A. P.), pages 137 to 139 *supra*.

—*Hotel-keepers—Compounding of tax at uniform rate on graduated percentage of dealer's turnover according to sliding scale—Classification, whether discriminatory.*—The object of rule 65 of the Orissa Sales Tax Rules, 1947 (new rule 90) providing for compounding of tax calculated at the uniform rate of three quarters of an anna in the rupee on a graduated percentage of the dealer's gross turnover on sales which have taken place in Orissa, according to the sliding scale, is clearly to apportion the burden equitably between different categories of hotel-keepers with varying

extent of gross annual turnover and has a reasonable nexus with the initial classification adopted by the Legislature in section 4(1) of the Orissa Sales Tax Act, 1947. The characteristics of the dealer with varying extent of gross annual turnover as provided in rule 65 are to be cumulatively considered and, if so looked at, they will afford a reasonable basis of classification which has a rational nexus with the object sought to be achieved. Therefore rule 65 is not discriminatory and does not offend Article 14 of the Constitution of India. Where in a reference under section 24(3) the department raised the preliminary point that the dealer's contention that rule 65 offended Article 14 was not one which the Sales Tax Tribunal constituted under the Act could refer to the High Court, its duty being merely to administer the Act: *Held*, that as the High Court had already directed the Tribunal to refer the question, it was not open to the High Court hearing the reference to go behind that decision. R. K. DAS, J.—Rule 65 is an alternative mode of assessment at the option of the dealer and therefore it cannot in any way be said to operate as discriminatory against the dealer. *State of Bombay and Another v. The United Motors (India) Ltd. and Others* [1953] (4 S.T.C. 133) followed. *Stewart Dry Goods Co. v. Lewis* (294 U.S. 550; 79 L.Ed. 1054) distinguished.—K. S. VASUDEVAN v. THE STATE OF ORISSA [1963] 14 S.T.C. 220 (Ori.).

Classification into certain varieties of tobacco and imposition of tax on Virginia tobacco—The guarantee of equal protection of laws enshrined by Article 14 of the Constitution of India does not require that the same law should be made applicable to all persons or that the law should have the same operation on all persons. It prohibits only an application of different laws to persons who are in similar circumstances. The requirements as to equal protection of laws do not forbid legislative classifications, provided such classifications rest on some difference germane to the purpose of the statute. A classification cannot be upheld on purely fanciful grounds and the Court has no right to conjure up possible situations which might justify discrimination. With reference to taxing statutes, the Legislature has considerable latitude in making classifications but they must also satisfy the test of equal protection and are liable to be struck down if they do not. There is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional to establish it beyond all doubt. The classification of tobacco into certain varieties of tobacco and

the imposition of sales tax on Virginia tobacco by Act XIV of 1955 is not discriminatory inasmuch as such a classification has a rational basis and a reasonable relation to the object sought to be achieved, namely, the raising of revenue, and therefore the provisions of Act XIV of 1955 do not infringe Article 14 of the Constitution and are not *ultra vires* the legislature.—GORANTLA BUTCHAIHA CHOWDARY AND OTHERS v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH) [1958] 9 S.T.C. 104 affirmed by S.C. in 13 S.T.C. 529—See below.

—The differences which exist between Virginia tobacco and country tobacco are materials on which the State could treat Virginia tobacco as forming a class by itself for purposes of taxation. Therefore Andhra Act XIV of 1955 which taxed sales of Virginia tobacco but exempted sales of country tobacco could not be said to be discriminatory and was not obnoxious to Article 14 of the Constitution. Taxation laws must also pass the test of Article 14. But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation. It is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and this burden is all the heavier when the legislation under attack is a taxing statute. It is only the sale under which the export is made that is protected by Article 286(1)(b) of the Constitution. A purchase which precedes such a sale does not fall within its purview though it is made for the purpose of, or with a view to, export. Decision of the Andhra Pradesh High Court in *Gorantla Butchiah Chowdary and Others v. The State of Andhra (Now Andhra Pradesh)* [1958] (9 S.T.C. 104) affirmed.—EAST INDIA TOBACCO COMPANY v. THE STATE OF ANDHRA PRADESH AND ANOTHER [1962] 13 S.T.C. 529 (S.C.).

Classification of commission agents—It was also submitted on behalf of the appellant that the third Explanation to section 2(1)(n) of the Act violated the guarantee under Article 14 of the Constitution since the classification contemplated,

i.e., sales through commission agents who account fully for all collections made and sales through commission agents who do not account for collections, was not made on any intelligible differentia and had no rational relationship to the purpose of the statute. In our opinion, there is no substance in this argument as the classification is based upon an intelligible differentia and it has a rational relationship with the object sought to be achieved by the statute. Counsel for the appellant is therefore unable to make good his submission on this aspect of the case.—**SRI TIRUMALA VENKATESWARA TIMBER AND BAMBOO FIRM v. COMMERCIAL TAX OFFICER, RAJAHMUNDRY** [1968] 21 S.T.C. 312 (S.C.).

Classification of transport systems into railway and otherwise—Although the U.P. Legislature had made a distinction between goods transported by railway company and goods transported otherwise, the classification was a reasonable one having a relation to the object of the enactment and therefore the provisions were not inconsistent with Article 14 and were not void.—**RAMA TRANSPORT CO. (PRIVATE) LTD. v. THE STATE OF UTTAR PRADESH, AND OTHERS** [1957] 8 S.T.C. 725 (All.).

Classification of offences under sec. 30, Andhra Pradesh General Sales Tax Act, 1957—The contingencies and situations contemplated by section 30(1) and 30(3) are not the same. The class to which imprisonment is provided is a distinct and different class from the one for which only fine is contemplated. This is clearly founded on an intelligible principle and therefore the classification of offences under section 30 does not violate Article 14 of the Constitution.—**M. SEETHARAMASWAMY & Co. v. COMMERCIAL TAX OFFICER, ELURU, WEST GODAVARI DISTRICT** [1960] 11 S.T.C. 581 (A.P.).

—**Section 22, Mysore Act, preventing assessee from questioning assessments in prosecution**.—Section 22 of the Mysore Sales Tax Act, 1948, does not offend Article 14 of the Constitution inasmuch as the prohibition in that section applies to all persons in respect of whom any assessment has been made or any order has been passed by any assessing authority under the Act and Rules and there is no discrimination as between persons falling under that category.—**STATE OF MYSORE v. K. MOHAMED ISMAIL** [1958] 9 S.T.C. 714 (Mys.).

Classification of manufacturers—The amendments introduced into the Madras General Sales Tax Act, 1939, by the Amending Act XIII of 1955 did not offend Article 14 of the Constitution by introducing an unreasonable discrimination between different classes of manufacturers.—**RAMRAJ TOBACCO TRADING COMPANY v. THE**

ASSISTANT COMMERCIAL TAX OFFICER, ATTUR, AND OTHERS [1957] 8 S.T.C. 127 (Mad.).

—**Manufacturer of gold ornaments—Exemption—Validity of Act making clear intention in granting exemption—Whether Act discriminatory—Whether infringes Article 14 or 19(1)(g), Constitution of India—Orissa Sales Tax Validation Act (7 of 1961), Section 2.—EPARI CHINNA KRISHNA MOORTHY, AND ANOTHER v. THE STATE OF ORISSA, AND OTHERS** [1964] 15 S.T.C. 461 (S.C.).

Classification as general assessee and those who have suppressed transactions for the purpose of assessment—Under the Andhra Pradesh General Sales Tax Act, 1957, the Government is competent to make the appointment of the Special Commercial Tax Officer (Evasions) and is also competent to assign not only the area over which he will have authority to make the assessment but also to prescribe the character of cases in which he can make such assessment. Notification G.O. Ms. No. 1091 dated 10th June, 1957, making such an appointment is not inconsistent with the provisions of the Act or the rules made thereunder. The definition of “assessing authority” in section 2(1)(b) itself by necessary implication authorises the Government to make the appointment of an assessing authority for the purpose of making any assessment under the Act. An assessee under the Andhra Pradesh General Sales Tax Act, 1957, has no right to get his assessment made only by the assessing authority of the area concerned. Section 4 of the Act is wide enough to empower the Government to assign a local area to a Special Commercial Tax Officer and section 2(1)(b) empowers the Government to make such an appointment. The areas can be assigned both to the Commercial Tax Officers as well as Special Commercial Tax Officers for the purpose of making the assessment. Both the officers in some respects will have concurrent powers to make the assessment under the Act. But while the Commercial Tax Officer of an area would deal with all the cases, the Special Commercial Tax Officer (Evasions) under the Notification G.O. Ms. No. 1091, Revenue, dated 10th June, 1957, can make assessment in cases of all dealers in respect of whose transactions any suppression or omission (whether or not fraudulent or wilful) is detected by the Special Commercial Tax Officer or brought to his notice in any manner whatsoever. When a case is dealt with by the Special Commercial Tax Officer under the notification, the Commercial Tax Officer of the area will refrain from dealing with that case. Notification G.O. Ms. No. 1091 dated 10th June, 1957, itself provides sufficient guidance and

mentions the categories of cases which the Special Commercial Tax Officer could select for the purpose of making the assessment. Apart from the fact that the procedure regarding assessment before the Commercial Tax Officer and the Special Commercial Tax Officer is not only the same, in both the cases appeals and revisions are provided against their orders of assessment under the same provisions of the law. No unequal treatment is meted out either between the members of the same class or even between the general assessees and the assessees selected for the purpose of making assessment by the Special Commercial Tax Officer (Evasions). Therefore the notification does not infringe Article 14 of Constitution. The fact that it is the notification and not the Act that empowers the Special Commercial Tax Officer to select the cases does not make any difference. Section 5A levying additional tax does not infringe Article 14 since it makes a reasonable distinction between assessees having more than 3 lakhs turnover and assessees having less than 3 lakhs turnover. *Sreeramulu Chetty v. State of Andhra* [1958] (9 S.T.C. 215) and *The Guntur District Co-operative Marketing Society Ltd. v. The State of Andhra Pradesh and Another* [1967] (20 S.T.C. 476) followed. *Dwarka Prasad v. State of U.P.* [1954] (A.I.R. 1954 S.C. 224) distinguished.—*BALUSU ANANDU AND OTHERS v. SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), KAKINADA* [1968] 21 S.T.C. 424 (A.P.).

Classification into registered and unregistered dealers—Turnover escaping assessment—Period of limitation for assessment of unregistered dealers and no period for registered dealers—Provisions, whether discriminatory.—The appellant, a registered dealer whose “year” for the purposes of the C.P. and Berar Sales Tax Act, 1947, was the year ending October 31, did not submit returns of its turnover for any period after April 30, 1952. On September 13, 1955, the assessing authority issued a notice, *inter alia*, under section 11(4)(a) for failure to furnish the return for the period January 1 to December 31, 1953, requiring attendance and production of books and documents on September 22, 1955. Similar notices were issued on October 27, 1955, and July 7, 1956, for the periods January 1 to December 31, 1954, and January 1 to December 31, 1955, respectively. The appellant took time repeatedly for submitting an explanation. In 1958 fresh notices were issued on a transfer of the case, whereupon the appellant objected to the validity of these notices on the ground that its assessment year was not the calendar year as mentioned in the notices but the year ending October 31.

Another set of notices was issued on July 8, 1959. The appellant filed writ petitions challenging that the notices issued in 1959 were barred by time. The petitions having been dismissed the appellant appealed to the Supreme Court: *Held*, by WANCHOO, C.J., MITTER and HEGDE, JJ. (BACHAWAT and RAMASWAMI, JJ., *dissenting*):—(i) that the knowledge of the fact that the appellant had not submitted its quarterly returns as well as the treasury challans constituted an information to the assessing authority from which he could be satisfied that the turnovers for the relevant periods had escaped assessment; and therefore, the appellant's case fell both under section 11(4)(a) and section 11A(1). It was open to the assessing authority to proceed against the appellant under any one of those two sections. Since the appellant was proceeded against under section 11(4)(a) the appellant could not have the benefit of the period of limitation prescribed under section 11A(1). Section 11(4)(a) became a discriminatory provision in view of section 11A(3). It offended Article 14 of the Constitution and had to be struck down. Both section 11(4)(a) and section 11A(1) concerned themselves with escaped assessments. The classification made between registered and unregistered dealers had no nexus with that object and was not a reasonable classification; (ii) that a notice under sec. 11(4)(a) or section 11A(1) was not a condition precedent for initiating proceedings under those provisions. All that the sections prescribed was that before taking proceedings against a dealer under those provisions he should be given a reasonable opportunity of being heard. The period of 30 days prescribed by rule 32 of the rules framed under the Act was not mandatory. When the appellant received the notices of 1955-56 it did not object to their validity but merely asked for time which was given. The fact that only nine days were given by the notices for submitting an explanation could not have prejudiced the appellant. The notices were to be read together and so read they gave the appellant the reasonable opportunity contemplated by section 11(4)(a) and section 11A(1); (iii) that the assessing authority had no jurisdiction to assess the turnover of the appellant for the period May 1 to October 31, 1952, since no notice was issued within three years, and for the quarter November 1, 1952 to January 31, 1953, which formed a unit since no notice was given in respect of that quarter; (iv) that, since every escapement of assessment coming within the scope of section 11(4)(a) was also an escapement of assessment under section 11A(1) and a notice issued under section 11(4)(a) would be a valid notice in respect

of a proceeding under section 11A(1), the notices issued in 1955 and 1956 were valid notices in respect of the period from February 1, 1953, to October 31, 1955, though the notices were not in respect of particular quarters and did not coincide with the assessment year of the appellant. They were to be read together and they were valid notices so far as they related to the period February 1, 1953 to October 31, 1955. *Per* BACHAWAT and RAMASWAMI, JJ. (*dissenting*):—Having regard to the special provisions of section 11(4) read with section 11A(3), the power under section 11A(1) as interpreted in *Ghanshyamdas's case* [1963] (14 S.T.C. 976) (S.C.) to assess turnover which escaped assessment by reason of non-filing of returns, must be confined to cases of unregistered dealers. Cases of registered dealers falling within section 11(4) are excluded from the purview of section 11A(1). The Act deals with registered dealers differently in many ways. The classification and differential treatment of registered and unregistered dealers are based on substantial differences having reasonable relation to the object of the Act. The bar of limitation in the case of an unregistered dealer and the absence of such a bar in the case of a registered dealer cannot be regarded as unjust or discriminatory. There is no compulsion on the Legislature to prescribe a period of limitation in every case. Section 11(4) is not violative of Article 14.—ANANDJI HARIDAS AND CO. (P.) LTD. v. S. P. KUSHARE, SALES TAX OFFICER, NAGPUR, AND OTHERS [1968] 21 S.T.C. 326 (S.C.).—See also MADHYA PRADESH INDUSTRIES LTD. v. STATE OF MAHARASHTRA [1968] 22 S.T.C. 400 (S.C.).

Commissioner—Section 29, Assam Act, conferring power on Commissioner to assess dealers not ordinarily liable to tax and selling goods obtained from outside State.—Section 29 of the Assam Sales Tax Act, 1947, provided that: "Where a dealer not ordinarily liable to registration under the provisions of this Act, sells goods which he has obtained from outside the Province, he shall, when so required by the Commissioner, be liable to registration, and, after such registration, he shall also be liable to be taxed on all sales as if he were a registered dealer": *Held*, (1) that the tax imposed under the section directly attracted the inhibitions prescribed by section 297 of the Government of India Act, 1935, or Article 304 of the Constitution of India, 1950, because of its discriminatory character in favour of goods produced or manufactured inside the State, and the section was therefore *ultra vires* the State Legislature; (2) that the power conferred upon the Commissioner by virtue of section 29 had the potency of being

exercised with unjust discrimination and whatever might have been the validity of such authority before the Constitution of India, such power, which was capable of being used with discrimination in favour of or against particular individuals, would be void and inoperative under Article 14 of the Constitution and the section was *ultra vires* on this ground also.—BHARAT AUTOMOBILES, GAUHATI v. STATE OF ASSAM [1957] 8 S.T.C. 537 (Assam).

—*Amendment of certificate of registration—Powers conferred on Commissioner—Whether arbitrary and void.*—Section 7(4) of the Bengal Finance (Sales Tax) Act, 1941, is not void as being repugnant to Articles 14 and 19 of the Constitution. Even if the section confers arbitrary powers on the Commissioner of Commercial Taxes or persons to whom he may delegate his functions, it exposes all registered dealers equally to the arbitrariness of his decisions. The section makes no discrimination as between registered dealer and registered dealer and, therefore, it cannot be said that by its provisions equals are treated unequally. There is no fundamental right to carry on business in a country without paying taxes which the country's laws impose. The exemption under the Act is only a concession and if it is withdrawn, the holder of the registration certificate is merely consigned to its original position of having to purchase certain classes of goods which will be chargeable to sales tax like sales of the same goods to all other persons. If the Act, in so far as it imposes a tax on sales does not constitute an unreasonable restriction on the freedom to carry on trade or business, a concession, once offered under the provisions of that very Act and then withdrawn for reasons stated in the Act itself, cannot be condemned as constituting any restriction on the freedom of trade or business.—INDIAN IRON AND STEEL CO., LTD. v. COMMERCIAL TAX OFFICER, AND OTHERS [1957] 8 S.T.C. 517 (Cal.).

Different conditions for entertaining appeal—Payment of tax as condition for entertaining appeal—Appeals against revisional orders passed by Deputy Commissioner under section 20, alone subject to such condition—Validity of provision—Whether violates Articles 14 and 19, Constitution of India.—Under the Andhra Pradesh General Sales Tax Act, 1957, while appeals against orders passed in revision by the Deputy Commissioner under section 20(2) are subject, under section 21(6), to the condition of proof of payment of the entire tax before it can be entertained, appeals against orders passed in revision under section 20(2) by authorities higher than the assessing authorities and lower than the Deputy Commissioner or appeals against

orders passed in revision by the Board of Revenue under section 20(2), or appeals against the orders of the Deputy Commissioner himself under section 14(4-C) are not subject to such a fetter. The petitioners filed petitions under Article 226 of the Constitution and challenged the validity of section 21(6) on the ground that it is violative of Articles 14 and 19(1)(f) and (g) of the Constitution: *Held*, that there is no rationale having a reasonable basis for the discrimination made by section 21(6) between orders passed by the Deputy Commissioner under section 20 on the one hand, and orders passed under that section by authorities either superior or inferior to the Deputy Commissioner or even orders passed by the Deputy Commissioner under section 14(4-C) on the other. Section 21(6) is therefore discriminatory and violative of Article 14 of the Constitution and it has to be struck down to the extent that it places a fetter on an appeal against the orders of the Deputy Commissioner under section 20(2) of the Act. [The question whether section 21(6) is unconstitutional on the ground that the fetter imposed by the section is so onerous as to virtually taking away the right of appeal by making it illusory was left open.]—**SURYALAKSHMI COTTON MILLS LTD. AND ANOTHER v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD DIVISION, AND OTHERS** [1969] 23 S.T.C. 178 (A.P.).

Different procedures for filing appeals in different State Acts—Whether discriminatory.—The assessee filed an appeal to the Sales Tax Appellate Tribunal against an assessment under the Central Sales Tax Act, 1956. When the Appellate Tribunal required proof of payment of tax from the assessee as required by section 21(6) of the Andhra Pradesh General Sales Tax Act, 1957, the assessee contended that that provision did not apply to appeals under the Central Sales Tax Act and that even if it applied, it was discriminatory: *Held*, rejecting both the contentions, (1) that section 21(6) of the Andhra Pradesh Act requiring proof of payment of tax is a substantive provision but under section 9(3) of the Central Sales Tax Act not only the procedural provisions but also the substantive provisions of the local sales tax law were made applicable and therefore section 21(6) of the Andhra Pradesh Act applied to appeals under the Central Sales Tax Act also; (2) that the object of the Central Sales Tax Act is to give freedom for each State to levy and collect tax in accordance with the provisions of the Act of each State and therefore the question of any discrimination does not arise merely because one State makes certain provisions different from those made by another State.—**MOHD. AKHALAQ AHMED v.**

THE STATE OF ANDHRA PRADESH AND OTHERS [1969] 23 S.T.C. 204 (A. P.).

Differential treatment of dealers in the issue of bills—The legislature cannot be said to have contravened Article 14 of the Constitution of India by taking into account, in enacting section 27, Mysore Sales Tax Act, 1957, that the necessity for issuing bills is greater and more desirable in the case of persons with a larger turnover than in the case of persons with a smaller turnover.—**K. N. KRISHNASWAMY v. COMMERCIAL TAX OFFICER, CHICKMAGALUR, AND ANOTHER** [1967] 20 S.T.C. 239 (Mys.).

Differential treatment of dealers depending on turnover—Section 3(2) of the Kerala Surcharge on Taxes Act (XI of 1957) is not violative of the provisions of Article 14, 19(1)(f), (g) or 276 of the Constitution. Section 3(2) is of universal application in respect of all dealers whose turnover exceeds Rs. 30,000 and who are made liable for payment of surcharge under section 3(1). The fact that under the General Sales Tax Act, 1125, a dealer is permitted to pass on sales tax to the consumer and that under Act XI of 1957 in respect of surcharge, such passing is not permitted does not by itself make the provisions of the latter Act in any manner discriminatory.—**S. RAMANATHA SHENOY & Co. v. SALES TAX OFFICER, TELLICHERRY, AND ANOTHER** [1963] 14 S.T.C. 231 (Ker.).

Differential treatment involved in exemption limit—Section 3 of the Kerala Surcharge on Taxes Act, 1957, is not violative of either Article 14 or Article 19(1)(f) and (g) of the Constitution. The differential treatment involved in the fixation of an exemption limit in the Kerala Surcharge on Taxes Act, 1957, is not a discrimination which is either unreasonable, or devoid of a nexus between the provision incorporated and the object sought to be achieved by the enactment. A sales tax is nothing else than a sales tax so long as the base of the tax is nothing other than a sale of goods.—**KILIKAR v. SALES TAX OFFICER, SPECIAL CIRCLE, MATTANCHERRY, AND ANOTHER** [1968] 21 S.T.C. 252 (Ker.).

Exemption of State Government and Spinners Association—A State in carrying on a commercial or industrial activity, not from a business or profit-making motive but purely with the object of encouraging cottage industries, as required by Article 43 of the Constitution, may legitimately claim to be a class apart from the dealers who carry on their business with the object of profit-making and therefore the classification of the State and Central Governments for the purposes of the Sales Tax Act as a separate class different from ordinary dealers was valid. For the

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same reason, the Spinners Association and the Gandhi Ashram, Meerut, which were dedicated to the object of encouraging of cottage industries in hand-woven and hand-spun yarn and cloth could also be put in a category separate from other dealers. A State acts in two capacities, sovereign and commercial. In its sovereign capacity it exercises the legislative, judicial and executive functions properly so-called. In that capacity, it must necessarily be placed in a different category from private individuals. When, however, the State acts as a commercial concern, it can sue and be sued like any other private person and it can be put on the same footing as the latter. Any discrimination between the State acting in its commercial capacity and another individual engaged in an activity in which the State is engaged must be justified upon principles, namely, (1) that the classification made by the statute must be founded on an intelligible differentia and (2) that the differentia must have a rational relation to the object sought to be achieved by the enactment.—*FIRM JASWANT RAI JAI NARAIN v. SALES TAX OFFICER, AND OTHERS* [1955] 6 S.T.C. 386 (All.).

Exemption—Tax on persons with certain extent of business and exemption of others.—It is open to the Government to impose a tax on persons with certain extent of business and exempt others who have not got business of that extent. It is not necessary for equal protection before the law that every business man must be taxed alike whatever his financial extent of the business.—*LALA GIAN CHAND AND OTHERS v. PUNJAB STATE AND OTHERS* [1957] 8 S.T.C. 646 (Punj.).

—Although the State Legislature by the Andhra Amendment Act XVI of 1956 made the turnover of the dealers of goods specified in sub-sections (2-A) and (2-B) of section 3 of the Madras General Sales Tax Act, 1939, liable to tax without any exemption limit and exempted dealers of goods specified in sub-section (2) as well as other goods on their turnover of less than Rs. 10,000, it was for the petitioners alleging discrimination to show that the classification was arbitrary and was unconnected with the object sought to be achieved. Having regard to the fact that in the case of taxation laws, larger discretion is given to the State in the matter of classification and sufficient latitude is permissible to the State to adjust the burden of taxation on a fair and reasonable degree of equality, it does not prevent the State from adjusting its taxation in all appropriate and reasonable ways and in the absence of necessary facts demonstrating that the classification has no rational basis to the object sought to be achieved, *viz.*, the raising of the revenue, it must be said that the retrospective

operation of the levy of tax introduced by the amendment seeks to adjust the burden with a fair and reasonable degree of equality.—*PITHA-PURAM TALUK, TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.).

Exemption—Notification exempting garments excluding hosiery products—Whether infringes Article 14, Constitution of India—Hosiery products—Meaning of—Whether include "banians" and "chaddies".—The petitioners were selling "banians" and "chaddies" and were registered as dealers under the Rajasthan Sales Tax Act, 1954. In exercise of the powers conferred by section 4(2) of the Act the Government issued Notification No. F. 5(3) E. & T./58 dated 31st January, 1958, exempting from sales tax the sale of any garments whether prepared within or imported from outside Rajasthan the value of which did not exceed Rs. 4 in single piece. In *Pareek Hosiery Products v. Deputy Commissioner of Sales Tax (Appeals), Jaipur and Others* [1962] (13 S.T.C. 722) the High Court held that "banians" and "chaddies" were garments within the meaning of the notification and were exempt from the payment of sales tax where the value of a single piece was less than Rs. 4. Subsequently the Government issued Notification No. F. 5 (99) E. & T./60 dated 26th March, 1962, which ran as follows:—"In exercise of the powers conferred by sub-section (2) of section 4 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), and in supersession of this Department Notification No. F. 5(3) E. & T./58 dated the 31st January, 1958, the State Government being of the opinion that it is necessary in public interest to do so, hereby exempts the sale of garments whether prepared within or imported from outside Rajasthan the value of which does not exceed Rs. 4 in single piece excluding hosiery products and hats of all kinds, from payment of any tax under the said Act: Provided that a dealer obtains an exemption certificate on payment of an annual fee of Rs. 10." The Commercial Taxes Officer held that "banians" and "chaddies" were hosiery products within the meaning of the notification and included their sale value in the petitioners' taxable turnover. The petitioners thereupon filed a petition under Article 226 of the Constitution and contended (1) that the notification dated 26th March, 1962, was violative of Article 14 of the Constitution; (2) that the term hosiery did not include "banians" and "chaddies"; and (3) that the notification was in excess of the powers of the State Government under section 4(2): *Held*, (1) that the notification dated 26th March, 1962, was in accord with the language of section 4(2)

of the Act and it was not lacking in a proper classification so as to be hit by Article 14 of the Constitution ; (2) that "banians" and "chaddies" were included in the term "hosiery products" and were, therefore, excluded from the operation of the notification dated 26th March, 1962 ; (3) that the notification accorded with the language of section 4(2) and it could not be said to be in excess of the powers granted by that section to the State Government.—**JAIPUR HOSIERY MILLS PRIVATE LTD. AND OTHERS v. STATE OF RAJASTHAN AND OTHERS** [1967] 19 S.T.C. 416 (Raj.).

Exemption—Withdrawal of exemption granted to jaggery and gur by amending Schedule and simultaneous issue of notification granting exemption to palm jaggery—Validity—Whether discriminatory.—The exemption granted to jaggery and gur under the Madras General Sales Tax Act, 1959, was withdrawn from 1st January, 1968, when item 5 of the Third Schedule to the Act was amended by the Government by issuing a notification under section 59(1) of the Act and this became law as Act 2 of 1968 when the Legislature approved the notification. On the same day, in exercise of their powers under section 17(1), the Government issued another notification granting exemption in respect of the tax payable on all sales of palm jaggery. The grant of such an executive exemption was challenged in the High Court by certain dealers in cane jaggery by a petition under Article 226 of the Constitution: *Held*, (1) that the policy of taxation is flexible and a provision empowering the executive to exempt particular goods from a duty is valid ; (2) objectively viewing the provisions attacked, it could not be said that the Legislature or the executive arbitrarily acted to the prejudice of the traders in cane jaggery ; (3) the imposition of tax on palm jaggery and cane jaggery under Act 2 of 1968 and the subsequent grant of exemption from such tax to palm jaggery alone under section 17 did not cumulatively or otherwise impose any unreasonable restriction on trade in cane jaggery ; (4) the exemption granted to sales of palm jaggery was competent and even if it were to be viewed as restrictive of trade in relation to cane jaggery, such a restriction was reasonable, rational and necessary in the public interest ; (5) cane jaggery and palm jaggery being two different commodities, the State Government was not unjustified in differentiating them for tax purposes, and therefore no question of discrimination arose.—**K. SUBRAMANIA PILLAI AND OTHERS v. STATE OF MADRAS** [1969] 23 S.T.C. 359 (Mad.). Affirmed by the Supreme Court—See 24 S.T.C.

Exemption—Imposition of tax on purchase of sugarcane for use, consumption or sale in factory

—Minimum price for sugarcane fixed by Government—Statute fixing zones for factory—Occupier of factory bound to accept cane offered by cane grower—Form of agreement prescribed by statute—Tax whether constitutional—Exemption of khandsari units and cane growers producing jaggery—Whether discrimination—Power to exempt new factories and factories which have substantially expanded—Whether discriminatory.—**THE ANDHRA SUGARS LTD. AND ANOTHER v. THE STATE OF ANDHRA PRADESH AND OTHERS** [1968] 21 S.T.C. 212 (S.C.).

Fixing of different taxable minimum—The provisions of the charging sections 5 and 10 of the Bombay Sales Tax Act, 1952, fixing Rs. 30,000 and Rs. 5,000 as the minimum taxable turnover for general tax and special tax respectively were not discriminatory and were not therefore void under Article 14 read with Article 13 of Constitution.—**STATE OF BOMBAY AND ANOTHER v. THE UNITED MOTORS (INDIA) LTD. AND OTHERS** [1953] 4 S.T.C. 133 (S.C.).

—**Imposition of tax on dealers having more than three lakhs—Whether discriminatory.**—Section 5-A of the Andhra Pradesh General Sales Tax Act, 1957, levying additional tax on dealers having a turnover of more than Rs. 3 lakhs does not infringe Article 14 of the Constitution since it makes a reasonable distinction between assesseees having more than 3 lakhs turnover and assesseees having less than 3 lakhs turnover.—**BULUSU ANANDU AND OTHERS v. SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), KAKINADA** [1968] 21 S.T.C. 424 (A.P.).—See also **THE GUNTUR DISTRICT CO-OPERATIVE MARKETING SOCIETY LTD. v. THE STATE OF ANDHRA PRADESH AND ANOTHER** [1967] 20 S.T.C. 476 (A. P.) and the case reported at [1969] 24 S.T.C. 133.

Geographical classification—The different sales tax laws in different parts of Madhya Pradesh could be sustained on the ground that the differentiation arose from historical reasons. A geographical classification based on historical reasons does not violate the provisions of Article 14 of the Constitution.—**BHAIYALAL SHUKLA v. THE STATE OF MADHYA PRADESH, AND OTHERS** [1962] 13 S.T.C. 236 (S.C.).

Hides and skins—New Rule 16(2), Madras Turnover and Assessment Rules—Whether discriminates against hides and skins imported from other States.—Article 301 of the Constitution of India prohibits barriers of any kind which would stand in the way of free inter-State trade and commerce. Barriers can take various forms. There may be direct legislation prohibiting or restricting entry of goods from other States. Indirect barriers can also be created by taxation. While Article 303

relates to the former category, Article 304 relates to the latter. The words "manufactured or produced" in Article 304(a) exhaust all categories of goods that can be found in a State other than the goods imported and should be understood as contradistinguished from goods imported from outside the State. They cannot be limited to goods in respect of which excise duty can be levied. The term "any tax" is a term of wide import, not confined to excise duty alone. Having regard to the object of Articles 301 and 304, no discriminatory power of taxation vested in a State, either at the point of import or at a later time. It would not, therefore, be open to any State to levy a tax on goods having its origin in a different State at any stage of its existence in the former State so as to discriminate it from goods of a similar kind manufactured or produced therein. To ascertain whether rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, as re-enacted by the Government in 1955, is invalid as contravening Article 304(a) of the Constitution of India, the substance of the rule, and not the form, has got to be looked into. Rule 16 is based on the principle of single point levy of tax on tanned and untanned skins, which constitute only one class of goods, and prescribes points for the levy according to the circumstances in which a sale may take place in the State and not on any principle with reference to the origin of the goods. It does not therefore contravene Article 304(a) and is valid.—*P. ABDUL SUBHAN & Co. v. THE STATE OF MADRAS AND ANOTHER* [1960] 11 S.T.C. 173 (Mad.).

—*New Rule 16(2), Madras Turnover and Assessment Rules—Whether discriminates against hides and skins imported from other States.*—The provisions of rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 (substituted in the place of the old rule with effect from 1st April, 1955) discriminate between hides and skins imported from outside the State and those manufactured or produced inside the State and therefore they contravene the provisions of Article 304(a) of the Constitution of India and are invalid. Once the old rule has been substituted by the new rule, the old rule ceases to exist and it does not automatically get revived when the new rule is held to be invalid. Taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not compensatory taxes or regulatory measures. Sales tax on hides and skins imposed under the Madras General Sales Tax Act, 1939, and the rules framed thereunder cannot be said to be a measure regulating any trade or compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discriminating

between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 of the Constitution of India and will be valid only if it comes within the terms of Article 304(a). The similarity contemplated by Article 304(a) is in the nature of the quality and kind of the goods and not with respect to whether they were already the subject of a tax or not. As rule 16 was made by the Governor in the exercise of the power conferred on him under section 19 of the Act, it has statutory force and it would fall within "a law made by the State Legislature". It is also part of the enactment which imposes the tax. Where the taxing officer has no jurisdiction to assess the tax on account of the invalidity of the rule under which the tax is assessed, the principle of the decision in *Ujjam Bai v. State of Uttar Pradesh* (A.I.R. 1962 S.C. 1621) is not applicable.—*FIRM A.T.B. MEHTAB MAJID & Co. v. THE STATE OF MADRAS, AND ANOTHER* [1963] 14 S.T.C. 355 (S.C.).

—*Validity of Madras General Sales Tax (Special Provisions) Act (11 of 1963).*—Sub-section (1) of section 2 of the Madras General Sales Tax (Special Provisions) Act, 1963, discriminates against imported hides and skins which were sold up to 1st of August, 1957, up to which date the tax on the sale of raw hides and skins was at the rate of 3 pies per rupee or 19/16th per cent. The sub-section being void in its provisions with respect to a certain initial period, the court could not change the provision with respect to the period as enacted to the period for which it could be valid as that would be re-writing the enactment. The sub-section is therefore void and the other provisions of the section become unenforceable. The sub-section is discriminatory and invalid for the same reasons which led the Supreme Court to hold sub-rule (2) of rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, invalid in *Firm A.T.B. Mehtab Majid & Co. v. The State of Madras and Another* [1963] (14 S.T.C. 355). In *Mehtab* case, discrimination was brought about on account of sale price of tanned hides and skins to be higher than the sale price of untanned hides and skins, though the rate of tax was the same, while, in the present case, the discrimination does not arise on account of difference of the price on which tax is levied as the tax on the tanned hides and skins is levied on the amount for which those hides and skins were last purchased in the untanned condition, but on account of the fact that the rate of tax on the sale of tanned hides and skins is higher than that on the sale of untanned hides and skins. Raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they could

therefore be treated as different goods for the purposes of the Act. The fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing. Sub-rule (1) of rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, did not become invalid when the Supreme Court declared sub-rule (2) of that rule invalid in *Mehtab's* case. The State Legislature is free to enact laws which would have retrospective operation. Its competence to make a law for a certain past period depends on its present legislative power and not on what it possessed at the period of time when its enactment is to have operation. Consequently although hides and skins were goods declared essential for the life of the community by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952, Act 11 of 1963 is not invalid for want of President's assent. Under section 2(1) of Act 11 of 1963, the tax is imposed on the sale which took place within the State. The State Legislature is competent to impose such a tax. The mere fact that the article sold in the State had been brought from outside the State does not make the sale of that article a sale in the course of inter-State trade or commerce. It is only when A, in State X, purchased through a commission agent in a State Y and receives the articles purchased through the commercial agency that the sale comes within the expression "in the course of inter-State trade."—A. HAJEE ABDUL SHUKOOR AND CO. v. THE STATE OF MADRAS [1964] 15 S.T.C. 719 (S.C.).

—*Tanned hides and skins—Local tanner and the importer taxed differently—Scheme of taxation—Whether discriminatory.*—Where under the provisions of the Madras General Sales Tax Act, 1939, and the rules framed thereunder during the relevant period, tanned hides and skins as one category had been taxed differently in the hands of the local tanner and in the hands of a person who imported them, either dressed or undressed, tanned and sold them: *Held*, that the provisions were discriminatory and offended Article 304 of the Constitution. *Firm A.T.B. Mehtab Majid & Company v. State of Madras* [1963] (14 S.T.C. 355) and *Hajee Abdul Shukoor and Co. v. The State of Madras* [1964] (15 S.T.C. 719) followed.—P. HAJEE ABDUL WAHAB & SONS AND ANOTHER v. THE GOVERNMENT OF MADRAS [1966] 17 S.T.C. 284 (Mad.).

Imposition of sales tax on khandesari sugar—Whether an act of discrimination—Validity of section 4, U.P. Sales Tax Act, 1948.—JOGRAJ, SINGH AND OTHERS v. THE STATE OF U.P. AND ANOTHER [1956] 7 S.T.C. 219 (All.).

Imposition of sales tax on imported "bura sugar" and exempting "bura sugar" manufactured locally—Validity.—Under the Madhya Bharat Sales Tax Act, 1950, imported "bura sugar" was liable to sales tax, but "bura sugar" made from sugar imported or manufactured in Madhya Bharat was exempt from the tax: *Held*, that the provision in the Act permitting the imposition of tax on sales of imported "bura sugar" was discriminatory and unconstitutional.—UMRAOLAL SUBALAL v. STATE OF MADHYA PRADESH AND OTHERS [1960] 11 S.T.C. 337 (M.P.).

Imposition of additional tax on imported sugar—Whether discriminatory.—Provisions in the Sales Tax Law of a State which have the effect of discrimination between the goods of one State and those of another may affect the free flow of trade and in that sense offend Article 301 of the Constitution; such laws can be validated only if they come under the saving provision of Article 304(a). To attract that saving provision, the history of the goods anterior to their import to the State is irrelevant. Article 304(a) takes up the goods only after their import into the State is over, and after they had become part of the mass of the goods of the State. It has no concern with the position of a dealer who may have to sell goods, which during their passage through several States might have had to pay sales tax successively, and which therefore might have enhanced the price of the goods to the particular dealer. It deals with the goods only after they have entered a particular State and saves such goods from discriminatory taxation at the hands of that State; as long as the State taxation laws do not make a distinction between imported goods and goods manufactured in that State, such laws will be *intra vires*. The provision in section 3(2) of the Madras General Sales Tax Act, 1939, for the levy of additional sales tax on the first sale of imported sugar was not *ultra vires* Article 301 of the Constitution inasmuch as it did not make a distinction between imported sugar and sugar manufactured in the State. The single point levy including the additional levy falls alike on all sugar in the State either at the point of first sale after production or at the point of first sale after import and from this point of view, there is no question of any discriminatory treatment of sugar as a commodity selected for sales tax levy at a single point.—M. AYYASWAMI NADAR v. THE STATE OF MADRAS [1965] 16 S.T.C. 957 (Mad.).

Imposition of sales tax on imported tobacco but not on locally grown tobacco—Legality.—By a notification dated 24th October, 1953, issued by the Government under section 5 of the Madhya Bharat Sales Tax Act, 1950, sales tax was chargeable at a certain rate on "leaves of tobacco, manufactured tobacco used for smoking, eating and for snuff, and tobacco chura used for the manufacture of bidis" sold by an importer. Locally grown tobacco was not, however, subject to a similar tax. The petitioners sold imported as well as locally grown tobacco and the Sales Tax Authorities assessed them to sales tax on the basis of a taxable turnover determined after deducting from their turnover the sale of "domestic tobacco" and recovered the tax accordingly. The petitioners filed a petition under Article 226 of the Constitution of India challenging the validity of the imposition of sales tax on tobacco imported by them on the ground that it contravened the provisions of Article 304(a) of the Constitution of India and claimed a refund of the tax already collected from them: *Held*, that the imposition of sales tax on the petitioners in respect of the sales of tobacco imported into Madhya Bharat was illegal, being in violation of Art. 304(a) of the Constitution, and that the petitioners were entitled to refund of the amount paid by them as tax. Even if it be said that the provision imposing tax on sales of tobacco was on the face of it fair and not discriminatory in appearance, yet if in its actual working, effect and operation it has proved to be discriminatory between tobacco imported and tobacco grown in Madhya Bharat, it must be adjudged as repugnant to Article 304(a). Article 304(a) gives to the State Legislature the power to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and similar goods of local origin. Its object is to maintain freedom of inter-State trade and to ensure that no special tax on the act of import or on the imported goods as such is levied. The discrimination spoken of in that article is not discrimination as between the import of goods from outside the State and import of goods of local origin. It is difficult to conceive of import into a State of goods manufactured in that State itself. Payment by an assessee of a tax, which is subsequently declared to be *ultra vires*, must be regarded as a payment made under mistake and the party receiving the same is bound to return the amount of tax irrespective of any consideration whether the moneys have been paid voluntarily, subject, however, to questions of

estoppel, waiver, limitation or the like.—**BHAILAL BHAI v. STATE OF M. P. AND ANOTHER** [1960] 11 S.T.C. 511 (M.P.). On appeal to Supreme Court see the next para.

—**Imported tobacco and tobacco produced in State—Notification imposing tax on tobacco at the point of sale by importer—Whether contravenes Art. 304(a).**—By a notification issued by the Madhya Bharat Government in exercise of the powers under section 5 of the Madhya Bharat Sales Tax Act, 1950, tobacco leaves, manufactured tobacco (for eating and smoking) and tobacco used for bidi manufacturing were subjected to tax at a certain rate at the point of sale by the importer in Madhya Bharat. The petitioners, who were dealers in tobacco, filed a petition under Article 226 of the Constitution and contended that the notification under which the tax was assessed and collected from them was unconstitutional as it infringed Article 301 of the Constitution and did not come within the special provisions of Article 304(a). The High Court upheld the contention of the petitioners and ordered refund of the tax paid by them in certain cases and rejected the prayer for refund in other cases: *Held*, (1) that even though it was the sale in Madhya Bharat of the imported tobacco that created the liability to tax and not the import by itself, the trade and commerce as between Madhya Bharat and other parts of India was directly impeded by the tax and it therefore contravened the provisions of Article 301 of the Constitution; (2) that tobacco manufactured or produced in Madhya Bharat had not been subjected to the tax which tobacco imported from other States had to pay on the sale by the importer and therefore the tax was not within the saving provisions of Article 304(a); (3) that as a portion of the tax assessed had been paid by the petitioners and as this payment was made under a mistake within section 72 of the Indian Contract Act, 1872, the Government must in law repay it. But whether repayment should be ordered in the exercise of the discretionary power under Article 226 would depend in each case on its own facts and circumstances.—**THE STATE OF MADHYA PRADESH AND ANOTHER v. BHAILAL BHAI AND OTHERS** [1964] 15 S.T.C. 450 (S.C.).

Imposition of tax on sale of imported "bardana" without a corresponding levy on "bardana" manufactured or produced inside State—Whether levy unconstitutional and invalid—Writ petition—Power of High Court to quash such assessment and order refund of tax realised.—Under section 4(2) of the Rajasthan Sales Tax Act, 1954, the Rajasthan Government issued a notification exempting from

tax "the sale of bardana (old or new or being received as container) except on the first point at the hands of an importer in the series of sales in the State". The petitioner was assessed to sales tax on the sale of gunny bags imported by it from outside Rajasthan and thereupon the petitioner filed a petition under Article 226 of the Constitution contending that the levy of sales tax on the imported "bardana" was bad and unconstitutional and praying for quashing the assessment order and for refund of the tax realised from it: *Held*, (1) that the levy of sales tax on the imported "bardana" on the first point at the hands of an importer in Rajasthan without levy of a similar tax on "bardana" produced or manufactured in Rajasthan was violative of Article 301 of the Constitution and was not within the saving provisions of Article 304(a). Therefore the levy of tax under the notification on the sale of gunny bags imported by the petitioner was invalid; (2) that in the facts and circumstances of the case, the High Court could not exercise its discretion in favour of the petitioner by ordering refund of the money realised as sales tax; but the petitioner would be entitled to pursue an appropriate remedy either under the Rajasthan Sales Tax Act or under the ordinary civil law for repayment of the amount. The term "bardana" used in the notification is not equivalent to "gunny bags" only but it refers to all types of containers including gunny bags. For the purpose of judging the validity of tax on the sale of "bardana" the Court cannot make any distinction between various types of "bardana" and if no tax is levied on one or more types of "bardana" produced or manufactured in Rajasthan, it cannot be levied on the sale of any type of "bardana" imported into Rajasthan. It is not permissible to the State to pick out one type of "bardana" and justify the levy of tax on the ground that the "bardana" of that type is not produced or manufactured in Rajasthan and, therefore, there is no discrimination. Even though it is the sale in Rajasthan of the imported "bardana" that creates the liability to tax and not the import by itself, it would none the less impede the trade and commerce as between Rajasthan and other parts of India. The Government must in law repay the tax paid to it under a mistake of law, but whether repayment should be ordered by the High Court in the exercise of its discretionary powers under Article 226 of the Constitution would depend in each case on its own facts and circumstances.—GHASIRAM MANGILAL OF SAMBHAR *v.* THE STATE OF RAJASTHAN AND ANOTHER [1969] 23 S.T.C. 262 (Raj.).

Imposition of sales tax on rubber produced from lands situated outside Madras State—*Legality*.—The words "produce of the land" in the definition of turnover in section 2(1) of the Madras General Sales Tax Act, 1939, because of the constitutional provision not to discriminate, cannot be construed as referring only to lands situated within the Madras State, but having regard to the proposition that the Legislature must be presumed to observe the constitutional limits, must be interpreted as covering lands situated beyond the boundaries of the Madras State as well. Therefore, the levy of tax on the sales of rubber produced from lands outside the Madras State would be discriminatory and void, as rubber sold from estates within the Madras State would not be liable to tax on the ground of being agricultural produce.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE *v.* SHERNELL RUBBER AND CARDAMOM ESTATES LTD. AND OTHERS [1961] 12 S.T.C. 519 (Ker.).

Interest—*High rate of interest*.—Inasmuch as the matter relating to interest is incidental to the recovery and collection of sales tax, the U.P. Legislature was competent to enact section 8(1-A) of the Act relating to interest and it will be fully covered by entry 54 of List II in Schedule VII of the Constitution. The Civil Procedure Code (5 of 1908) and the U.P. Sales Tax Act, 1948, operate in two different fields. Whereas the Code regulates the procedure to be followed in a civil court, the Act is a taxing statute. Consequently the circumstance that the Civil Procedure Code provides for interest only at the rate of 6 per cent. and section 8 of the Act provides for interest at the rate of 18 per cent. cannot lead to the conclusion that the latter provision is discriminatory. Considering the market rate of interest paid and realised by businessmen 18 per cent. per annum provided by section 8(1-A) cannot be said to be usurious.—P. C. BHANDARI & Co. (P.) LTD. *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW, AND OTHERS [1969] 23 S.T.C. 324 (All.).

Provisions in East Punjab General Sales Tax Act, 1948—Resulting in purchasing of goods from adjoining State in order to avoid higher rate of tax—*Validity*.—EVEREST WOOLLEN MILLS *v.* THE STATE OF PUNJAB AND ANOTHER [1966] 18 S.T.C. 69 (Punj.).

Rebate—*Withdrawal of rebate on refined oil from groundnut oil*.—The withdrawal of rebate as regards refined oil (refined oil from groundnut oil) by the addition of sub-rule (5) in rule 18 of

the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, was not illegal and also did not conflict with the doctrine of equality before law and equal protection of laws contained in Article 14 of the Constitution.—*BERAR OIL INDUSTRIES AND ANOTHER v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR* [1959] 10 S.T.C. 199 (A. P.).

Rebate—Groundnut oil—Withdrawal of rebate to refined oil by amending rule—Whether violative of Article 14, Constitution of India—Inter-State sales—Scope of Article 286(1)(a), Constitution of India—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, Rules 5(1)(k) 18.—The Government Notification [G. O. No. 2923, Revenue, dated 9th November, 1951], amending rule 5(1)(k) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, by the addition of the words "other than refined groundnut oil", and adding sub-rule (5) to rule 18 of the said Rules, the effect of which was the withdrawal of the benefit of the deduction of the purchase price of groundnut or kernel, which went into the manufacture of refined oil, from the sale turnover of such oil, does not suffer from the vice of unconstitutionality on the ground of its being repugnant to Article 14 of the Constitution. There is intelligible differentia between raw groundnut oil, refined oil and hydrogenated oil to form the basis of a reasonable classification for purposes of taxation. The decision in *Berar Oil Industries and Another v. The Deputy Commissioner of Commercial Taxes, Anantapur* [1959] (10 S.T.C. 199) does not require reconsideration. Article 14 ensures equality amongst equals. It is designed to protect all persons placed in similar circumstances against legislative discrimination, but if the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well-defined class, such action is not open to the charge of denial of equal protection on the ground that the law does not apply to all persons. Where under a contract of sale, there is a transport of goods from outside a State into the territory of the State, and the contract itself involves the movement of goods across the border, the transaction is stamped with the character of an inter-State sale.—*TUNGABHADRA INDUSTRIES LTD. v. THE STATE OF ANDHRA PRADESH* [1966] 17 S.T.C. 366 (A.P.) (F.B.).

Rates of tax—Imposition of higher rate of tax on coconuts by the Andhra Act.—A State is not precluded from choosing different rates of taxation for different objects and it would not be violating the guarantees enshrined in Article 14

of the Constitution of India if it imposed different rates on different commodities. Therefore the imposition of a higher rate of tax of 3 naye paise in the rupee on coconuts did not constitute an infraction of Article 14 of the Constitution. The tax of 3 naye paise could however be imposed only till 1st October, 1958. Thereafter all declared goods were liable to be taxed at 2 naye paise by reason of the prohibition contained in section 15 of the Central Sales Tax Act, 1956. All that is necessary in order to save a classification from the vice of discrimination is that there should be a reasonable relation between the basis of the classification and the object of the Act. Coconuts are comprehended within the expression "oil-seeds" in section 14 of the Central Sales Tax Act, 1956.—*SRI KRISHNA COCONUT CO. v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 193 (A. P.).

Sales to registered dealer—Amendment deleting section 15(1)(b)(i)(b)—Whether violates Article 14 or 19(1)(g), Constitution.—The amendment introduced in section 15 of the Assam Sales Tax Act, 1947, by section 2 of the Assam Sales Tax (Amendment) Act, 1960, by which item (b) of sub-clause (i) of clause (b) of sub-section (1) was deleted and thereby sales of goods to a registered dealer intended for use in production of goods for sale became liable to sales tax was not violative of either Article 14 or 19(1)(g) of the Constitution. It is for the Legislature to decide as to what articles it should tax and what articles it should not tax and if it decided to tax certain articles in order to effectuate its policy that would not introduce discrimination.—*STEELSWORTH LIMITED v. THE STATE OF ASSAM AND ANOTHER* [1962] 13 S.T.C. 233 (S.C.).

Tax on selected commodities—Taxing measures imposing sales tax on selected commodities and not on others cannot be regarded as discriminating between one dealer and another. There is no discrimination in taxing betel leaves when vegetables are exempted.—*MADHYA PRADESH PAN MERCHANTS ASSOCIATION, SANTRA MARKET, NAGPUR v. STATE OF MADHYA PRADESH (SALES TAX DEPARTMENT) AND OTHERS* [1956] 7 S.T.C. 99 (Nag.).

Seizure and confiscation—Whether incidental and ancillary power to levy sales tax—Actual evaders of tax and attempted evaders—Whether reasonable classification—Provisions of sections 28(6), 29(3) and (4)—Whether violate Article 14, 19(1)(f), (g) or 31—Confiscation and criminal prosecution—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 14, 28(6), 29(3), (4)—Constitution of India, Articles 14, 19(1)(f), (g), 31(2), (5).—*KALANGI KRISHNA MURTY & Co.*

AND OTHERS *v.* THE COMMERCIAL TAX OFFICER, GUNTUR, AND OTHERS [1968] 22 S.T.C. 540 (A.P.).

—See also under CONSTITUTION OF INDIA.

Tax on coarse and medium cloth—The Hyderabad General Sales Tax Act, 1950, came into force on 1st May, 1950, and coarse and medium cloth were made liable to taxation under the third amendment to the Act which became enforceable from 1st August, 1952: *Held*, that the enactment of the impugned Act was not a colourable exercise of legislative power and it did not infringe the guarantee relating to equality before the law.—FIRM OF SOMA RAJAIAH AND OTHERS *v.* SALES TAX OFFICER, SECUNDERABAD, AND ANOTHER [1954] 5 S.T.C. 187 (Hyd.).

Tax on purchase of groundnuts—As all persons who deal in groundnuts are treated alike and are taxed on the purchase transaction alone, it cannot be said that there has been a deliberate discrimination or singling out, and therefore rule 5(2) of the Hyderabad General Sales Tax Rules, 1950, does not offend Article 14 of the Constitution.—KONDURI BUCHI RAJALINGAM *v.* STATE OF HYDERABAD AND OTHERS [1954] 5 S.T.C. 401 (Hyd.). This decision was affirmed on appeal to Supreme Court see [1958] 9 S.T.C. 397.

Taxable points and taxable events—The proviso to section 3(2) of the Madras General Sales Tax Act, 1939, is not discriminatory in its terms and even if it were so, the fixing of taxing points and taxable events at the discretion of the Legislature amounts to a reasonable classification and not falling within the mischief of Article 14 of the Constitution.—JAIN JARI STORES *v.* THE STATE OF MADRAS [1962] 13 S.T.C. 220 (Mad.). On appeal to Supreme Court see [1967] 20 S.T.C. 381.

Turnover escaping assessment—Period of limitation for assessment of unregistered dealers and no period for registered dealers—Provisions whether discriminatory.—ANANDJI HARIDAS AND Co. (P.) LTD. *v.* S. P. KUSHARE, SALES TAX OFFICER, NAGPUR, AND OTHERS [1968] 21 S.T.C. 326 (S.C.) page 499 *supra*.

—**Limitation—Provisions of section 11(2) and 11A, C. P. and Berar Act**—Whether cover different fields—Whether discriminatory.—While section 11(2) of the C. P. and Berar Sales Tax Act, 1947, deals with pending proceedings, section 11A concerns itself with matters which are not pending. The sections do not cover the same field, nor do they overlap. A notice under section 11(2) does not initiate any proceeding but is merely a step in a pending proceeding, and the fact that there is no period of limitation for the issue of a notice under section 11(2) while,

on the other hand, a period of limitation is prescribed under section 11A does not amount to discrimination. Neither section 11(2) nor section 11A(3), to the extent to which it provides that nothing in sub-sections (1) and (2) of section 11A shall apply to a notice issued under section 11(2) is, therefore, violative of Article 14 of the Constitution.—MADHYA PRADESH INDUSTRIES LTD. *v.* STATE OF MAHARASHTRA AND OTHERS [1968] 22 S.T.C. 400 (S.C.).

Works contracts—Levy of tax on percentage basis.—The levy of sales tax on moneys realised for execution of works contracts in accordance with the provisions of the Mysore Sales Tax Act and the rules framed thereunder is arbitrary and leads to unreasonable discrimination. They are therefore repugnant to the rules of natural justice and Article 14 of the Constitution.—KENCHAPPA AND OTHERS *v.* SALES TAX OFFICER, FOURTH CIRCLE, BANGALORE [1957] 8 S.T.C. 329 (Mys.).

Works contracts—Levy of sales tax on works contracts in Kerala (Part B State)—Whether violative of Article 14 of the Constitution.—See SOUTH INDIA CORPORATION (PRIVATE) LTD. *v.* THE SECRETARY, BOARD OF REVENUE, TRIVANDRUM [1961] 12 S.T.C. 344 (Ker.) reversed by Supreme Court in [1964] 15 S.T.C. 74—See page 164 *supra*.

DISPENSING CHEMIST

Dispensing chemist—Whether manufactures or produces goods for sale.—See NORTH BENGAL STORES LTD. *v.* MEMBER, BOARD OF REVENUE, BENGAL [1946] 1 S.T.C. 157 (Cal.).

Medical practitioner owning drug-store-cum-dispensary—Whether dealer.—See J. P. DIXIT *v.* THE STATE [1952] 3 S.T.C. 161.

Partner in firm selling medicines and doing consultation work in premises of firm—Receipts from prescriptions—Whether taxable.—See MESSRS PEARL AND Co. *v.* THE STATE OF BOMBAY [1960] 11 S.T.C. (T.D.) 48.

Doctor selling medicines to patients according to prescriptions issued by him—Whether manufacturer of medicines.—The State Government issued a notification under section 4 of the U.P. Sales Tax Act, 1948, exempting medicines and pharmaceutical preparations from payment of sales tax, but subsequently they revoked the exemption and issued Notification No. ST-3504/X dated 10th May, 1956, under section 3-A laying down that medicines and pharmaceutical preparations manufactured in Uttar Pradesh was not to be taxed except when sold by the manufacturer. The assessee, a practising doctor and dispensing chemist, sold medicines required by his patients

according to the prescriptions issued by him. He claimed exemption from sales tax on the ground that he was not a manufacturer of medicines. The assessing, appellate and revisional authorities held that he was a manufacturer of medicines and was therefore liable under the notification, but they did not consider his liability under section 3. At the instance of the assessee the Judge (Revisions) referred to the High Court the question, "whether the preparation of medicines on prescriptions of the applicant amounted to a manufacture of 'medicines and pharmaceutical preparations' within the meaning of Notification No. ST-3504/X dated 10th May, 1956, and whether the applicant was assessable to tax on the turnover of the medicines so dispensed": *Held*, (1) that the result of the notification issued in 1956 was (a) to remove the exemption and thereby make the turnover of medicines assessable under section 3, and (b) in respect of medicines manufactured in Uttar Pradesh the turnover in the hands of the manufacturer alone was liable to tax; (2) that a notification under section 3-A is meant for an article which is expected to be sold more than once. Medicines prepared according to prescriptions are meant to be sold only to particular patients and in respect of them there cannot be more than one point of sale and the State Government could not have intended that the notification issued by them under section 3-A could cover them; (3) that the preparation of medicines on the prescriptions of the assessee did not amount to a manufacture of "medicines and pharmaceutical preparations" within the meaning of the notification; (4) that the assessee had sold medicines and had done so in the course of his business. He was, therefore, a dealer liable to pay tax on the turnover of the medicines sold by him under section 3; (5) that although the assessee never challenged his liability under section 3, he had every opportunity of contending that he was not liable to sales tax under it, and he could not get immunity from liability under it just because he had not been held liable under it by the assessing, appellate and revisional authorities; (6) that every order passed under section 10 deals with the assessability of an assessee to sales tax and, therefore, it could not be said that the second limb of the question referred did not arise out of the order passed by the Judge (Revisions). Though the liability of the assessee under section 3 was not considered by the Judge (Revisions) because of the error to which he and others had fallen, it could not be said that it could not be considered by the High Court in answering the second limb of the question. However wide a meaning may be given to the word

"manufacture", it does not include preparation of mixtures in accordance with prescriptions to be used solely by the named patients. There cannot be a manufacture unless the resulting produce is a commercially different article. When the assessee mixed together the ingredients mentioned in the prescription and supplied the mixture to the patient he did not produce an article commercially different from the ingredients from which it was produced. The resultant article had no name other than "mixture" and a "mixture" could not be said to be an article commercially different from the ingredients that were mixed. *Badri Prasad Prabha Shanker and Another v. Sales Tax Commissioner, U.P., Lucknow* [1963] (14 S.T.C. 208) referred to. *North Bengal Stores, Ltd. v. Member, Board of Revenue, Bengal* [1946] (1 S.T.C. 157) distinguished.—*DR. SUKH DEO v. COMMISSIONER OF SALES TAX, LUCKNOW* [1963] 14 S.T.C. 581 (All.) affirmed by Supreme Court in [1969] 23 S.T.C. 385.

—When, as prescribed by a medical practitioner, a mixture of different drugs is prepared by the medical practitioner or by his employees specially for the use of a patient in the treatment of an ailment or discomfort diagnosed by the medical practitioner by his professional skill and which mixture is normally incapable of being passed from hand to hand as a commercial commodity, the medical practitioner supplying the mixture cannot be said to be a manufacturer of the mixture. The preparation and issue from his dispensary of medicines on the prescription of a medical practitioner therefore would not amount to a manufacture of "medicines and pharmaceutical preparations" within the meaning of Notification No. ST-3504/X dated May 10, 1956, issued under section 3-A of the U.P. Sales Tax Act, 1948, and the medical practitioner would not be assessable to tax on the turnover of the medicines so dispensed.—*COMMISSIONER OF SALES TAX, U.P. v. DR. SUKH DEO* [1969] 23 S.T.C. 385 (S.C.).

—A doctor who only dispenses his own prescriptions for his patients is a "dealer" within the meaning of section 2(d) of the Punjab General Sales Tax Act, 1948, and he himself manufactures or produces goods for sale as contemplated in section 4(5)(b) of the Act. There is no difference between the case of a chemist who prepares medicines on the prescriptions of any doctor and the doctor who has his own dispensary to dispense his own prescriptions for his patients.—*DR. BALDEV RAJ v. THE STATE OF PUNJAB AND ANOTHER* [1969] 24 S.T.C. 50 (Punjab and Haryana). This decision was reversed on appeal. See [1969] 24 S.T.C. 173 (Punjab and Haryana).

Medical practitioner manufacturing, advertising and selling a specific medicine—Whether dealer—Liability to sales tax.—*SRI DAMMA PEDDA YELLAPPA, NANDYAL v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 691 (A.P.).

DISSOLUTION

(See FIRM)

DISTRIBUTORS

Transaction between manufacturers and distributors—Goods supplied to distributors under consignment notes—Accounts of manufacturers credited only after sale of goods—Whether transaction between manufacturers and distributors, sale.—The appellants, M. B. Ltd., were manufacturers of medicines. They supplied the manufactured goods to a company called M.B. (India) Ltd., under certain specified consignment notes, which were held by the Collector of Sales Tax to be sales assessable under the Bombay Sales Tax Act, 1953. There was no formal agreement between the company and the appellants, but the practice was that the company intimated its likely requirements from time to time and goods were consigned to it under consignment rates in which no value of the goods was stated. Sales were effected by the company at list prices fixed in advance by the appellants. Products sold by the company bore labels in which the appellants were shown as the manufacturers and the company as the distributors. The appellants did not take credit in their accounts for sales of goods until the goods had in fact been sold. They had a right at all times before sale to recall from the company any goods consigned for sale. Although the company insured the goods on receipt, the cost of insurance premia was debited to the appellants by the company. The company received its commission and credited to the appellants the price of the goods as soon as the sale took place even when the price of the goods had not been realised by the company: *Held*, that, in the circumstances of the case, the supplies made by the appellants to the company did not represent sales attracting the provisions of the Bombay Sales Tax Act, 1953.—*MAY & BAKER LTD. v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 448.

Distributor of oil company—Invoices of goods supplied prepared in distributor's name—Distributor liable for price of goods sold—Whether distributor dealer.—*THE STATE OF MADHYA PRADESH v. SHRI DAYARAM RATHOD* [1961] 12 S.T.C. 572 (M.P.) page 462 *supra*.

—*Oil company*—Supply of publicity materials to distributors at cost price or less than cost price—

Liability to sales tax.—Where the assessee, an oil company with limited liability, placed bulk orders for publicity materials to secure the materials at a reduced cost for their distributors and handed over such publicity materials to them either at cost price or at less than cost price: *Held*, that it would be inappropriate to regard the assessee as a dealer in publicity materials. While the distribution may be connected with the pursuit of the assessee's business, it was not by itself its business carried on as a dealer. Therefore the turnover relating to the sales of publicity materials was not chargeable to tax.—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LIMITED, MADRAS-1, AND OTHERS v. THE STATE OF MADRAS* [1968] 21 S.T.C. 227 (Mad.).

—Distributors and producer of films—Supply of posters and publicity materials to producers—Entries in accounts—Whether transaction sale.—*RAJSHRI PICTURES PRIVATE LTD. v. THE STATE OF ANDHRA PRADESH* [1965] 16 S.T.C. 348 (A.P.).

—Distribution of cloth—Syndicate consisting of wholesalers—Stock of cloth distributed to members by syndicate when cloth was decontrolled—Whether sale—Whether syndicate liable to sales tax.—*KANPUR KAPRA COMMITTEE v. COMMISSIONER OF SALES TAX* [1966] 17 S.T.C. 10 (All.).

—Producer of cinematograph films—Grant by way of lease "entire world negative rights" of film for 49 years—Nature of rights granted—Whether amounts to a sale of goods.—*A.V. MEIYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS* [1967] 20 S.T.C. 115 (Mad.).

Distributing retail consignee in the scheme of distribution of controlled cloth—Whether dealer.—See DEALER page 471 *supra*.

DOCTOR

(See DISPENSING CHEMIST)

DOCUMENTS

(See also ACCOUNT BOOKS and SALES TAX AUTHORITIES)

The words "other documents" in section 14(1) of the Madras General Sales Tax Act, 1939, are vague and indefinite but they should be construed to mean "other documents" in the nature of account books, bill books etc. that have some relation to the accounts and not any correspondence.—*P. K. ADIMOOLAM CHETTIAR, In re* [1957] 8 S.T.C. 741 (Mad.).

DOMESTIC USE

"Domestic use"—*Meaning of—Supply of charcoal and firewood to Government hospitals for preparing food and boiling water—Whether sale for domestic use—Whether exempt from levy of sales tax.*—The supply by a contractor of charcoal and firewood to Government hospitals for boiling water and preparing food is a sale for domestic use within the meaning of entry 29 of the Fifth Schedule to the Mysore Sales Tax Act, 1957, and is exempt from the levy of sales tax. As the basis of the exemption under entry 29 is a particular nature of the use to which the firewood or charcoal is put or is intended to be put, the exact place where the same is used cannot make any difference to the essential nature of the use itself. The purpose or object of the use is what is indicated by the word "domestic", namely, the supplying of such services or comforts as, according to ordinary habits of civilised life, are commonly supplied in people's homes. *Metropolitan Water Board v. Avery* ([1914] A.C. 118) relied on.—*J. VAMANA PRABHU v. THE STATE OF MYSORE* [1967] 20 S.T.C. 38 (Mys.).

Domestic electrical appliances—Whether include passenger lifts.—See *EASTERN ENGINEERS v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 229 (T.D.).

—Electric fans—whether domestic electrical appliances—Tests stated.—*VISWA & Co. v. THE STATE OF GUJARAT* [1966] 17 S.T.C. 581 (Guj.).

DOUBLE TAXATION

Dual taxation—Dual taxation (taxation of sales where goods are found and taxation of the same transaction where sale actually takes place) where it has actually been levied on a single transaction of sale may be attacked on grounds of policy, but cannot be called in question legally under any of the provisions of the C.P. and Berar Sales Tax Act.—*GOVINDRAM LAXMAN PRASAD v. STATE OF MADHYA PRADESH* [1951] 2 S.T.C. 176, at page 191.

Double taxation—Cotton and cotton seeds—Whether two different goods—Taxation of cotton at purchase point and of cotton seeds at sale point.—The assessee, a dealer in cotton, was assessed to tax as purchaser of cotton under item 5 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957. When he sold the cotton seeds, after separating the seeds from the cotton, he was assessed to tax on the sale point of cotton seeds under item 23 of Schedule II. On the question whether there was double taxation contrary to the provisions of the Act: *Held*, that it is only by a manufacturing process that the cotton and seed are separated and it is not correct to say that the seed so separated is cotton itself, or part

of the cotton. They are two distinct goods, though before the manufacturing process the seed might have been a part of the cotton itself. Therefore there was no taxation of the same goods both at the purchase point and the sale point; *Held further*, that if in exercise of the general policy of taxation the Legislature describes cotton and cotton seeds as two different commodities or goods for the purpose of the Sales Tax Act, it is not open to canvass the reasonableness or the justification of such a classification relying upon the hardship that would result therefrom. *Pithapuram Taluk Tobacco, Cigars and Soda Merchants' Union v. The State of Andhra Pradesh* [1958] (9 S.T.C. 723) referred to.—*KOTAK AND COMPANY v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 709 (A.P.).

—See also COTTON page 426 *supra*.

—**Butter and ghee—Whether same goods.**—Butter and ghee, which are mentioned in the notification No. 112, G.O. Ms. No. 566, Revenue, dated 11th March, 1960, as two different commodities, cannot be said to be the same goods. When the Legislature has treated butter and ghee as two different articles for the purpose of taxation, it is not the province of Courts to question the policy of the Legislature underlying it. In order that the inhibition in sub-clause (ii) of the proviso to section 5(5) of the Andhra Pradesh General Sales Tax Act, 1957, may be attracted the same dealer must have purchased the goods, and paid the tax, and his sale turnover of the same goods is also sought to be taxed. Whether the goods purchased by him and the goods sold by him are identical or not would therefore arise only in those cases in which the same dealer is made liable for the tax twice. Under the Andhra Pradesh General Sales Tax Act, 1957, multiple point taxation is the rule, and single point taxation, either on the point of purchase or sale, is an exception and exists only where it is expressly provided for. Under item 12 of Schedule III of the Andhra Pradesh General Sales Tax Act, 1957, butter and ghee were subject to a single point levy of tax at the point of purchase by the last dealer who bought them in the State. The petitioners exporting ghee to persons outside the State purchased the ghee from dealers who purchased butter and converted it into ghee. The petitioners being the last purchasers of the ghee in the State were assessed to tax on their purchases. The petitioners contended that their vendors had already paid tax on their purchase turnover relating to butter and, therefore, the ghee purchased by them could not be assessed to tax as it amounted to double taxation: *Held*, that there was no double taxation and that the

assessment of the petitioners was not contrary to the provisions of the Act. The High Court is ill-suited for, and cannot enter into, an investigation of disputed questions of fact in the exercise of its jurisdiction under Article 226.—*G. BALIAH SETTY, B. SATYANARAYANA & Co. v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 726 (A.P.).

Multiple taxation—A person trading in a manner which requires the protection of more than one State cannot complain if he has to pay a price for governmental protection and maintenance in all the States in which he does business. He is liable to be taxed in all the States, provided every such State has the necessary power to do so. Multiple taxation is an evil, which may sometimes be necessary, and multiple taxation can only be disallowed if the power to impose the tax does not exist. Indeed, the Courts are not concerned with what is done elsewhere.—*SHRIRAM GULABDAS v. BOARD OF REVENUE, MADHYA PRADESH* [1952] 3 S.T.C. 343 (Nag.).

Liability to two different taxes—*Whether double taxation*.—The burden of several kinds of taxes and levies on a particular commodity may be heavy but that does not mean that they are subjected to double taxation. By double taxation is meant tax imposed twice over upon the same individual on one passage of money in the form of one sort of income or under the same head of tax. Where the joint operation of different statutes results in liability to two different taxes it would not amount to double taxation.—*PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.).

Two taxes on same goods under two different enactments—*Validity*.—There can be two taxes on the same commodity or goods under two different enactments without the one law repealing the other. No repeal can be implied, unless there is an express repeal of an earlier Act by the later Act, or unless the two Acts cannot stand together.—*MATHRA PARSHAD & SONS v. STATE OF PUNJAB* [1962] 13 S.T.C. 180 (S.C.).

—See also cases digested at page 238 *et seq.*

Taxation on purchase point and sale point—Where the goods purchased and the goods sold are not identical ones it cannot be said that the same goods are taxed at two stages. Therefore where there is a purchase tax on oil-seeds or steel scrap and steel ingots or cotton, and sales tax on oil and oil-cake or rolled steel sections or yarn after manufacture, it cannot be said that the same goods are taxed at two stages, since the manufacture has changed the identity of the goods purchased and the goods sold. When oil is produced out of oil-seeds, the process certainly

transforms raw material into different article for use and oil-seeds can therefore be said to be used in the manufacture of goods. The process whereby scrap iron loses identity and becomes rolled steel sections, a new marketable commodity, is one of manufacture.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.).

Tax on country tobacco at purchase point and on cigars at sale point—Whenever any article is prepared from raw materials by giving them a form different to the raw material or changing the quality and the property, it cannot be said to remain in the same state. Some manufacturing process is involved in the production of cigars, cheroots, bidis, snuff, etc. from country tobacco, and therefore there is no double taxation when tax is levied on country tobacco at the purchase point and on cigars etc., at the sale point.—*PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.).

DRUG

Camphor—*Whether drug*—*Making of camphor cubes from camphor powder*—*Whether a process*.—Camphor is a drug and falls within the scope of the West Bengal Sales Tax Act, 1954. The activity contemplated by the word "process" is general, requiring only continuous and regular action or succession of actions leading to the accomplishment of some result, but it is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some other stuff. Therefore by converting camphor powder into camphor cubes the petitioner processed camphor powder into camphor cubes and fell within the definition of "dealer" in the West Bengal Sales Tax Act, 1954.—*SRI OM PRAKAS GUPTA v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1965] 16 S.T.C. 935 (Cal.).

Sarvaroga Sanjeevi Thailam—*Whether a drug or an article to beautify face or body*.—The "Sarvaroga Sanjeevi Thailam", which is a medicinal preparation and mainly used as a cure for skin diseases but appears to have perfume and gives out an agreeable odour, does not fall within the description of any one of the articles in item 51 of the First Schedule to the Madras General Sales Tax Act, 1959. Merely because its application may incidentally lend beauty will not alter the true character of the article. Item 51 mentions various articles each of which is intended to beautify the body or the face. There is nothing in the item which will cover medicinal preparations.—*THE STATE OF MADRAS v. S. P. VADIVEL NADAR AND SONS* [1968] 21 S.T.C. 448 (Mad.).

DYEING

Dyer—Whether dealer.—See DEALER page 463 *supra*.

Contract of dyeing—If the contract of dyeing yarn involves therein the transfer of property in dye-stuff and the price thereof is included in the price paid for the finished work the law can isolate the transaction of sale involved from other matters and tax it.—BABULAL *v.* D. P. DUBE AND OTHERS [1955] 6 S.T.C. 255 (Nag.).

—Where yarn brought by the customers for the purpose of dyeing is dyed by a dyer and returned to the customers, there is no sale of goods and therefore the dyer is not liable to sales tax. *Babulal v. D. P. Dube* [1955] (6 S.T.C. 255) distinguished.—NAGPUR YARN AND DYES MERCHANTS ASSOCIATION *v.* STATE OF BOMBAY AND OTHERS [1958] 9 S.T.C. 530 (Bom.).

Exemption—Notification exempting sale of cloth manufactured in U.P. with a view to export such cloth—Meaning of “such cloth”—Export of cloth after dyeing and printing—Right to exemption.—KAILASH NATH AND ANOTHER *v.* STATE OF UTTAR PRADESH AND OTHERS [1957] 8 S.T.C. 358 (S.C.).

Exemption—Yarn, whether includes dyed yarn.—Entry No. 20 in Schedule II of the C.P. and Berar Sales Tax Act, 1947, exempted from tax sales of “yarn excluding sewing and knitting thread”: *Held*, that yarn does not cease to be tax-free merely because it is dyed and therefore sales of dyed yarn are not taxable under the Act.—NAGPUR YARN AND DYES MERCHANTS ASSOCIATION *v.* STATE OF BOMBAY AND OTHERS [1958] 9 S.T.C. 530 (Bom.).

Person engaged in printing and dyeing of cloth manufactured by mills—Whether manufacturer.—A person who is engaged in the work of printing and dyeing textiles purchased by him and in the business of selling or supplying the printed and dyed material, is a manufacturer within the meaning of the definition given in section 2(k) of the Madhya Bharat Sales Tax Act, 1950.—HIRALAL JITMAL *v.* COMMISSIONER OF SALES TAX [1957] 8 S.T.C. 325 (M. P.).

Articles used in bleaching and dyeing—Whether used in the manufacture of any goods for sale—Liability to sales tax—Articles used in merely dyeing, bleaching and processing third parties' cloth by a company carrying on the business of manufacturing woollen textiles could not be considered to have been used by the petitioner in the manufacture of any goods for sale.—PUNJAB WOOLLEN TEXTILE MILLS *v.* ASSESSING AUTHORITY, SALES TAX, AMRITSAR [1960] 11 S.T.C. 486 (Punj.).

STD-65

EAST PUNJAB GENERAL SALES TAX ACT

East Punjab General Sales Tax Act (XLVI of 1948)—Application under Article 226 for prohibiting authorities from levying sales tax—Maintainability—Constitution of India, 1950, Article 226.—FIRM ISHAR DAS HARBANS LAL AND OTHERS *v.* THE EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER [1953] 4 S.T.C. 390.

—Application under Article 226 disputing assessment—Maintainability—Constitution of India, Article 226.—INDIAN IRON AND STEEL COMPANY LIMITED *v.* THE OFFICER ON SPECIAL DUTY (CENTRAL CIRCLE), PUNJAB [1959] 10 S.T.C. 150.

—Arrears of sales tax—Arrears due from firm—Arrest of son of partner—Legality—Arrears due from Hindu undivided family—Arrest of member of family—Legality—Punjab Land Revenue Act, 1887, Sec. 69.—S. UJJAL SINGH *v.* THE EXCISE AND TAXATION OFFICER, AMRITSAR [1967] 20 S.T.C. 35.

—Arrears of sales tax due by company—Whether managing director can be arrested.—SURINDER NATH KHOSLA *v.* EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER [1964] 15 S.T.C. 838.

—Assessing Authority—Jurisdiction—Filing of returns before competent officer—Issue of notices by another officer having jurisdiction over same assessee—Necessity of proper order of transfer.—KISHAN CHAND AND Co. *v.* K. K. OPAL, EXCISE AND TAXATION OFFICER (ENFORCEMENT), AMRITSAR [1966] 18 S.T.C. 50.

—Assessing Authority—Jurisdiction—Returns filed before competent officer—Issue of notices by another officer having jurisdiction over same assessee—Necessity of proper order of transfer.—MANSA RAM *v.* J. S. RAJYANA, EXCISE AND TAXATION OFFICER (ENFORCEMENT), LUDHIANA [1966] 18 S.T.C. 57.

—Assessing Authority—Jurisdiction—Transfer of assessment proceedings—Inherent jurisdiction—Whether proper order of transfer necessary.—KISHAN CHAND & Co. *v.* N. L. MURGAI, EXCISE AND TAXATION OFFICER, AMRITSAR [1966] 18 S.T.C. 110.

—Assessment—Quarterly returns—Assessment based on quarterly returns before expiry of thirty days as provided in rule 20—Legality—Necessity to pass order under rule 23 to assess for shorter period—Validity of assessment—Punjab General Sales Tax Rules, 1949, Rules 20, 23.—JAI GOPAL AND COMPANY *v.* THE ASSESSING AUTHORITY [1968] 21 S.T.C. 492.

—Assessment—Joint petition under Article 226, Constitution, assailing assessments for more than one year—Competency—Existence of alternative remedy—Effect—Principles stated—Duty of taxpayers—Firm—Initiation of assessment proceedings before giving notice of dissolution—Whether assessment of firm valid—Constitution of India, Article 226.—**MADAN MOHAN AND ANOTHER v. THE DISTRICT EXCISE AND TAXATION OFFICER, BHATINDA, AND ANOTHER** [1964] 15 S.T.C. 648.

—Co-operative society—Liability of members limited—Whether members liable for sales tax levied on society—Whether tax can be recovered personally from members by coercive methods—Co-operative Societies Act, 1912.—**THE ASHOKA BRICK KILN CO-OPERATIVE INDUSTRIAL SOCIETY LTD., FARIDABAD v. STATE OF PUNJAB AND ANOTHER** [1969] 23 S.T.C. 43.

—Dispute about facts and application of Act to facts of case—Application under Article 226—Maintainability—Constitution of India, Article 226.—**F. MANGAT RAM HAZARI MAL KUTHIALA v. THE STATE OF PUNJAB AND ANOTHER** [1959] 10 S.T.C. 194.

—Electricity—Whether goods—Petition under Article 226, Constitution, against refusal to register a dealer—Maintainability—Central Sales Tax Act (74 of 1956).—**MALERKOTLA POWER SUPPLY COMPANY v. THE EXCISE AND TAXATION OFFICER, SANGRUR, AND OTHERS** [1968] 22 S.T.C. 325.

—Essential commodities—Agricultural machinery—Punjab Act authorising Government to fix rate by notification—Agricultural machinery declared essential commodity by Central Act—Subsequent amendment of Punjab Act with retrospective effect fixing upper limit of tax to be levied by Government—Imposition of tax on sale of agricultural machinery—Legality—Validity of East Punjab General Sales Tax Act, 1948—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952)—East Punjab General Sales Tax (Second Amendment) Act (XIX of 1952).—**PREM NARAIN AND COMPANY v. THE EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER** [1957] 8 S.T.C. 1.

—Karyana, meaning of.—**DAULAT RAM RAUNAQ RAM v. THE STATE** [1955] 6 S.T.C. 443.

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—Sec. 16—See Sec. 2(d).

—Sec. 18—Firm—Dissolution—Assessment on firm after dissolution—Provisions of section 18—Whether retrospective in operation—Punjab General Sales Tax (Amendment) Act (2 of 1963).—*MADAN MOHAN AND ANOTHER v. THE DISTRICT EXCISE AND TAXATION OFFICER AND ASSESSING AUTHORITY, BHATINDA, AND ANOTHER* [1966] 18 S.T.C. 364.

—Secs. 18, 19, 20, 21, 22—Assessment to sales tax—Claim for exemption—Dismissal of application under section 18 without giving applicant opportunity of being heard—Application under Article 226 for appropriate writ—Maintainability—Constitution of India, 1950, Article 226.—*DHARAM CHAND KISHORE CHAND PURI AND BROTHERS v. THE EXCISE AND TAXATION COMMISSIONER, JULLUNDUR, AND ANOTHER* [1953] 4 S.T.C. 1.

—Secs. 20, 21—Rules framed under the Act—Revision—Rules prescribing prepayment of tax as condition precedent for entertaining revision in contradistinction to such a provision made in the Act itself in respect of appeals—Validity—Whether *ultra vires* State Government—Punjab General Sales Tax Rules, 1949, Rules 61-A, 62.—*DAYA KRISHAN v. ASSESSING AUTHORITY CUM EXCISE AND TAXATION OFFICER (ENFORCEMENT), FEROZEPUR, AND OTHERS* [1966] 18 S.T.C. 117.

—Secs. 20, 21, 22—Indian food preparations—Assessment to sales tax—Claim for exemption—Application under Article 226 for appropriate writ quashing assessment—Maintainability.—*VIDYA PARKASH AND OTHERS v. THE PUNJAB STATE* [1952] 3 S.T.C. 441.

—Sec. 21—Revision—Limitation—Power of Financial Commissioner to prescribe period of limitation—Revision petition filed after period—Whether Financial Commissioner bound to consider it on merits.—*BURMAH-SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. THE PUNJAB STATE* [1964] 15 S.T.C. 624.

—Sec. 21—Revision—Limitation—Power of Financial Commissioner to prescribe period of limitation—Construction of provisions—Petition under Articles 226 and 227—Power of High Court to remand—Constitution of India, Articles 226, 227.—*CHAMAN LAL & BROS. (PRIVATE) LTD. v. THE PUNJAB STATE AND OTHERS* [1961] 12 S.T.C. 643.

—Secs. 21, 22—Revision—Reference—Application for revision to Financial Commissioner—Dismissal on the ground of inordinate and unexplained delay and refusal to state case to High Court—Application for directing Financial Commissioner to refer questions of law—Maintainability.—*KANGRA VALLEY SLATE COMPANY,*

LIMITED v. THE PUNJAB STATE AND ANOTHER [1961] 12 S.T.C. 362.

—Sec. 21(3)—See also Sec. 4.

—Sec. 21(3A)—Revision—Prepayment of tax for entertaining revision petition—Validity of rule 61-A after amendment of Act in 1965—Punjab General Sales Tax Rules, 1949, Rule 61-A—Punjab General Sales Tax (Amendment) Act (28 of 1965).—*J. N. SHARMA AND SONS v. THE ASSESSING AUTHORITY, EXCISE AND TAXATION OFFICER, GURGAON, AND OTHERS* [1967] 20 S.T.C. 22.

—Sec. 22—See also Secs. 4, 10, 11, 18, 20.

—Sec. 27(1)—Reassessment—Rule 63—Whether *ultra vires* State Government—Punjab General Sales Tax Rules, 1949, Rule 63.—*PUNJAB STATE v. VISHWA NATH ARORA AND SONS* [1955] 6 S.T.C. 248.

—Sec. 27—See also Sec. 10.

—Schedule—Murghi dana—Whether wheat or wheat flour—Whether exempt from sales tax.—*THE PUNJAB STATE AND ANOTHER v. PURAN CHAND LAL CHAND AND OTHERS* [1956] 7 S.T.C. 17.

—Sch. A, item 1—Tractor—Whether a motor vehicle—Spare parts of tractors—Rate of tax—Petition under Article 226—Maintainability.—*BHARAT MOTOR COMPANY v. THE ASSESSING AUTHORITY AND OTHERS* [1968] 22 S.T.C. 133.

—Sch. B, item 37—Exemption—Excise duty—Drugs and toilet preparations containing alcohol—Levy of excise duty—Whether articles entitled to exemption from sales tax—Constitution of India, Article 277—Punjab Excise Act (1 of 1914).—*THE STANDARD DRUGS CO. v. THE STATE OF PUNJAB* [1961] 12 S.T.C. 446.

—Sch. B, item 37—Exemption—Goods on which duty is levied under Punjab Excise Act, 1914—Imposition of duty on medicinal preparations containing alcohol under Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955) which repealed the Excise Act—Whether such preparations entitled to exemption—“Former enactment” in section 8, General Clauses Act (10 of 1897)—Meaning of.—*THE PUNJAB STATE AND OTHERS v. SUKH DEV SARUP GUPTA* [1966] 18 S.T.C. 426.

—Sch. B, item 49—Withdrawal of exemption with retrospective effect by Amending Act—Whether tax can be imposed in the absence of specific provision in Amending Act authorising levy of tax—Punjab General Sales Tax (Amendment) Act (8 of 1962).—*SEWAK HOTEL v. THE EXCISE AND TAXATION OFFICER, BHATINDA, AND ANOTHER* [1963] 14 S.T.C. 524 reversed in [1968] 21 S.T.C. 276.

—Sch. B, item 49—Legislative powers—Exemption—Power of Legislature to withdraw exemption retrospectively—Effect of withdrawal—Applicability of section 6(2), Punjab Act, to Acts of Legislature—Punjab General Sales Tax (Amendment) Act (8 of 1962).—THE STATE OF PUNJAB AND ANOTHER *v.* SEWAK HOTEL, BHATINDA [1968] 21 S.T.C. 276.

—See also Sec. 6.

—Sch. B, item 50—Sale by Halwais of articles ordinarily prepared by Halwais—Scope of item 50, Schedule B.—SHIV RAM AND ANOTHER *v.* THE EXCISE AND TAXATION COMMISSIONER, PUNJAB [1961] 12 S.T.C. 554.

—Sch. B, items 49, 50—Exemption—Scope of items 49 and 50, Schedule B, East Punjab General Sales Tax Act (XLVI of 1948)—Maintainability of petition under Article 226, Constitution of India.—GREEN HOTEL AND RESTAURANT *v.* ASSESSING AUTHORITY, PATIALA, AND OTHERS [1961] 12 S.T.C. 603.

—Sch. item 51—Exemption—Manufactured tobacco—Issue of notification in middle of year granting exemption—Whether notification has effect from beginning of year or only from date of notification—Two taxes on same goods under two different enactments—Legality—Estoppel—Press note stating that tax will not be collected—Whether binds Government—Punjab Tobacco Vend Fees Act (XII of 1954).—MATHRA PARSHAD AND SONS *v.* THE STATE OF PUNJAB AND OTHERS [1962] 13 S.T.C. 180 (S.C.).

—Sch. C—Groundnuts—Whether oil-seeds—Levy of purchase tax—Legality—Maintainability of petition under Article 226, Constitution.—HANS RAJ CHOUDHRI *v.* J. S. RAJYANA, EXCISE AND TAXATION OFFICER (ENFORCEMENT) [1967] 19 S.T.C. 489.

East Punjab General Sales Tax (Second Amendment) Act (X of 1954)—Validity.—The East Punjab General Sales Tax (Second Amendment) Act (X of 1954) is a valid enactment because the State Legislature can, under the provisions of Article 286(1) of the Constitution read with the explanation, make provision for the levy of tax on sales where the goods are sold or delivered in the State.—TATA OIL MILLS COMPANY LTD. *v.* ASSESSING AUTHORITY (SALES TAX), AND ANOTHER [1954] 5 S.T.C. 256.

EDIBLE OIL

Cotton-seed oil—Whether edible oil.—The second point, *viz.*, whether cotton-seed oil is edible, is a question of fact. We have gone through the report of the Chemical Laboratories

and find that at some stage or other if the cotton-seeds are subjected to a highly specialised process, it might be possible to extract oil which is edible. The National Chemical Laboratories have in their report stated as under :—“Cotton-seed oil when pressed from cotton-seeds is dark and unappetising. On refining with alkali, bleaching with bleaching earths generally followed by deodorisation, colouring matters are removed and a light coloured oil is obtained. Most of this colour is due to a pigment called gossypol; on alkali treatment, the pigment is carried away leaving a light coloured oil. Refined cotton-seed oil, provided it is of the quality usually expected of an ordinary refined vegetable oil like groundnut, sesame, till, etc., is completely harmless and edible. This has been proved in the laboratory by test on rats; while especially in America, where the major oil is refined cotton-seed oil, it has been eaten without ill effects for over 30 years. It is also being consumed after refining in various parts of India. It can be used as food material as such or after hydrogenation to vanaspati. Refined cotton-seed oil of good quality is hence an edible oil just like any other edible vegetable oil.” The report taken as a whole would show that cotton-seed oil at any rate for the present has not become edible in the hands of the dealer.—KISHENLAL OIL MILLS, HYDERABAD *v.* COMMISSIONER OF SALES TAX, HYDERABAD [1955] 6 S.T.C. 650 (Hyd.).

Linseed oil, whether edible oil.—The word “edible” in Notification No. S.T. 117/X-923-1948 dated 8th June, 1948, should be interpreted to mean fit to be eaten as food. Linseed oil being an article fit for being eaten as food is clearly “edible oil” within the meaning of that notification. *Kamala Kant Misra v. State* ([1951] A.L.J. 348) and *State v. Bal Makund* [1954] (A.I.R. 1954 All. 97) referred to.—CHANDAUSI OIL MILLS, CHANDAUSI, MORADABAD *v.* SALES TAX COMMISSIONER, UTTAR PRADESH [1961] 12 S.T.C. 310 (All.).

—Linseed oil—Whether edible oil—Dealer in linseed oil converting oil seeds into oil in another’s mill after paying charges for crushing—Whether manufacturer of oil.—BULBU PRASAD AMARNATH *v.* COMMISSIONER OF SALES TAX [1964] 15 S.T.C. 46 (All.).

Vanaspati industry.—Sale of vegetable oil to industry engaged in the production of refined vegetable oil—Whether exempt.—UJJAIN OIL MILLS PRIVATE LTD. *v.* THE SALES TAX OFFICER, UJJAIN [1960] 11 S.T.C. 272 (M.P.).

Edible oils.—Manufactures of edible oil by electric motor—Claim for exemption from sales

tax—Application under Article 226 for writ of *mandamus*—Maintainability—Remedy provided under Sales Tax Act—Whether efficacious—Constitution of India, 1950, Article 226.—KANDHARI OIL MILLS, JULLUNDUR, AND OTHERS v. EXCISE AND TAXATION COMMISSIONER, PUNJAB, AND ANOTHER [1953] 4 S.T.C. 367 (Punj.).

—Section 5, East Punjab Act, giving power to State Government to levy tax at whatever rate—Validity—Whether whole Act *ultra vires*—Removal of defect with retrospective effect by Amendment Act passed after enactment of Central Act 52 of 1952—Subsequent notification withdrawing exemption to certain dealers of edible oils—Whether a law levying sales tax on goods declared essential by Act 52 of 1952—Whether invalid for not being reserved for assent of President.—Any legislation which vested unfettered legislative powers in the executive would be *ipso facto* void and unconstitutional. Therefore section 5 of the East Punjab General Sales Tax Act, 1948, which gave an unlimited power to the executive to levy sales tax at the rate it thought best, was invalid. Section 5 is the charging section and, being the kernel of the enactment, the remaining provisions of the Act would become inchoate or ineffective without it. Therefore the entire Act was invalid and did not become valid till the defect in section 5 was remedied by the East Punjab General Sales Tax (Second Amendment) Act (19 of 1952). Act 19 of 1952 was passed after the enactment of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (52 of 1952) and by virtue of section 3 of Act 52 of 1952 no tax could be imposed on edible oils by a State Legislature without obtaining the President's assent as required by Article 286(3). Notification No. 3483-E & T-54/723(CH) dated the 5th August, 1954, by which certain dealers in edible oils were made liable to pay sales tax, was a law made by the State Legislature after the enactment of Act 52 of 1952 and as the notification did not receive the assent of the President as required by Article 286(3), it was *ultra vires* and invalid.—GANGA RAM SURAJ PARKASH v. THE STATE OF PUNJAB [1963] 14 S.T.C. 476 (Punj.). See also the next para.

—Provision delegating power to State Government to fix rates without guidance—Whether void—After enactment of Central Act 52 of 1952 retrospective amendment of provision fixing maximum at 2 pice per rupee—Validity—Subsequent notification withdrawing exemption to certain dealers of edible oils—Whether effective—Whether Amendment Act and Notification invalid for not being reserved for assent of

President—East Punjab General Sales Tax Act (46 of 1948), Secs. 4, 5, 6(1), 22(5)—East Punjab General Sales Tax (Second Amendment) Act (19 of 1952)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (52 of 1952), Sec. 3—Constitution of India, Art. 286(3) (before and after amendment in 1956), Sch. VII, List II, entry 54—Punjab Government Notification No. 3483-E and T-54/723(CH) dated August 5, 1954.—THE STATE OF PUNJAB v. SANSARI MAL PURAN CHAND [1968] 21 S.T.C. 91 (S.C.).

—Provision delegating power to State Government to fix rates without guidance—Whether void—Subsequent retrospective amendment fixing maximum at 2 pice per rupee—Validity—Purchase tax—Tax on the purchase of goods for use in manufacture—Whether excise duty—“Purchase”, “acquisition of goods”, “valuable consideration”, meanings of—Purchase of goods for manufacture and sale of manufactured product—Tax at point of purchase of oil-seeds and sales tax on sale of oil—Whether same goods are taxed—Conversion of oil into oil-seeds—Whether manufacture—Punjab General Sales Tax Act (46 of 1948), Secs. 2(ff), 4, 5—Central Sales Tax Act (74 of 1956), Sec. 15.—DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS [1967] 20 S.T.C. 430 (S.C.).

EJUSDEM GENERIS

See the following cases :—

(1) DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. AMBIKA STORES [1963] 14 S.T.C. 688 (Mad.); (2) THE STATE OF ANDHRA PRADESH v. T. T. KRISHNAMACHARI & Co. [1962] 13 S.T.C. 10 (A.P.); (3) DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX, CENTRAL ZONE, ERNAKULAM v. P. Jos ZACHARIAH [1965] 16 S.T.C. 799 (Ker.); (4) S. R. CALCUTTAWALA, SIYAGUNJ, INDORE v. COMMISSIONER OF SALES TAX, MADHYA PRADESH [1967] 19 S.T.C. 230 (M.P.); (5) BURMAH-SHELL OIL STORAGE AND DISTRIBUTING CO. OF INDIA LTD. v. THE STATE OF MADRAS [1968] 21 S.T.C. 227 (Mad.); (6) TEXTTOOL COMPANY LIMITED v. THE STATE OF MADRAS [1968] 21 S.T.C. 232 (Mad.); (7) COMMISSIONER OF SALES TAX, MADHYA PRADESH v. JABALPUR AERATED WATER FACTORY [1965] 16 S.T.C. 7 (M.P.); (8) PLASTIC PRODUCTS LTD. v. COMMISSIONER OF SALES TAX [1967] 19 S.T.C. 480 (All.) and (9) PRAKASH TRADING Co. v. THE STATE OF GUJARAT [1969] 24 S.T.C. 106 (Guj.).

ELECTION

Submission of return—Turnover of previous year or assessment year—When election should be made.—

Under the U.P. Sales Tax Act, 1948, the selection of the basis on which a dealer should submit his return, *viz.*, turnover of the previous year or the assessment year, cannot be made at a stage subsequent to the first submission of the return. The dealer has to make the election when submitting his first return. It cannot be said that section 7(1) provided that the dealer can select the basis of his submitting the return at a stage subsequent to the first submission of the return.

—**MODI SUGAR MILLS LTD., AND ANOTHER v. THE SALES TAX OFFICER, GHAZIABAD, AND OTHERS** [1954] 5 S.T.C. 182 (All.).

Method of assessment—Rate of tax—Manufacturer and dealer in non-edible oils—Exercise of option to assess on previous year's basis—Issue of notification by Government during assessment year enhancing rate of tax on non-edible oils—Effect—Applicability of new rate—Scheme of U.P. Sales Tax Act—Interpretation of taxing statutes—U.P. Sales Tax Act (15 of 1948) as amended by U.P. Sales Tax (Amendment) Act, (25 of 1948), Secs. 3, 3A, 7—Notification dated 8th June, 1948. *Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.* [1955] (6 S.T.C. 287) affirmed.—COMMISSIONER OF SALES TAX, U.P. v. MODI SUGAR MILLS LTD.** [1961] 12 S.T.C. 182 (S.C.).**

—Year following the assessment year in which dealer commences business—Assessment on the basis of average monthly turnover of previous year—Whether compulsory—Election of dealer to file return of turnover of assessment year in lieu of turnover of previous year—Effect—U.P. Sales Tax Act (15 of 1948), Secs. 7(1), proviso, 18(3), (4)—U.P. Sales Tax Rules, 1948, Rules 39(1), 41(5).—**COMMISSIONER OF SALES TAX, U.P., LUCKNOW v. MADAN LAL DAYAL CHAND** [1968] 21 S.T.C. 80 (S.C.).

ELECTRICITY

Electricity—Whether "goods".—Electricity is goods for the purposes of the Madras General Sales Tax Act, 1959, and the Central Sales Tax Act, 1956.—*Kumbakonam Electric Supply Corporation Ltd. v. Joint Commercial Tax Officer, Esplanade Division, Madras* [1963] 14 S.T.C. 600 (Mad.).

—Electric energy falls within the definition of "goods" in both the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956.—**MALERKOTLA POWER SUPPLY COMPANY v. THE EXCISE AND TAXATION OFFICER, SANGRUR, AND OTHERS** [1968] 22 S.T.C. 325 (Punjab & Haryana).

—**Electricity—Whether goods—Madhya Pradesh Electricity Board—Whether dealer.**—The assessee, the Madhya Pradesh Electricity Board constituted under the Electricity (Supply) Act, 1948, carried

on the business of selling and supplying electricity as a trading operation with a view to earn profit. But electricity does not fall within the meaning of the definition of "goods" given in the C.P. and Berar Sales Tax Act, 1947, and the Madhya Pradesh General Sales Tax Act, 1958, and when the assessee distributed and supplied electrical energy there was no sale of electricity as goods. Therefore the assessee could not be held to be a "dealer" as defined in section 2(c) of the 1947 Act or section 2(d) of the 1958 Act, in respect of its activity of generation, distribution, sale and supply of electrical energy. *Kumbakonam Electric Supply Corporation Ltd. v. Joint Commercial Tax Officer* [1963] (14 S.T.C. 600) dissented from. As the assessee was not a dealer in respect of its activity of generation, distribution, sale and supply of electrical energy, the assessee was not entitled to purchase any taxable goods for the said activity without paying any sales tax to the selling dealer. The question, therefore, of the assessee becoming liable to purchase tax under section 4(6) of the C.P. and Berar Sales Tax Act, 1947, or section 7 of the M.P. General Sales Tax Act, 1958, could not arise. Those provisions apply only when taxable goods were purchased by a registered dealer free of taxes.—**MADHYA PRADESH ELECTRICITY BOARD, JABALPUR v. COMMISSIONER OF SALES TAX, MADHYA PRADESH** [1968] 21 S.T.C. 202 (M.P.). On appeal to Supreme Court see the next para.

—The Madhya Pradesh Electricity Board is a "dealer" within the meaning of the definition in section 2(c) of the C.P. and Berar Sales Tax Act, 1947, and section 2(d) of the Madhya Pradesh General Sales Tax Act, 1959, in respect of its activity of generation, distribution, sale and supply of electric energy. Electricity is "goods" within the meaning of the definition in section 2(d) of the Act of 1947 and section 2(g) of the Act of 1959. The term "movable property" when considered with reference to "goods" as defined for the purposes of sales tax cannot be taken in a narrow sense and merely because electric energy is not tangible or cannot be moved or touched, like, *e.g.*, a piece of wood or a book, it cannot cease to be movable property when it has also the attributes of such property. Electricity is capable of abstraction, consumption and use and it can be transmitted, transferred, delivered, stored, possessed, etc. *Kumbakonam Electric Supply Corporation Ltd. v. Joint Commercial Tax Officer, Esplanade Division, Madras* [1963] (14 S.T.C. 600), *Malerkotla Power Supply Co. v. Excise and Taxation Officer, Sangrur* [1968] (22 S.T.C. 325), Benjamin on Sale (8th Edition), page 171, 18 Am. Jur. 407, and *County of Durham Electrical etc. Co. v. Inland Revenue* ([1909] 2 K.B. 604)

referred to. *Rash Behari v. Emperor* [1936] (A.I.R. 1936 Cal. 753) distinguished.—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v. MADHYA PRADESH ELECTRICITY BOARD* [1969] 23 S.T.C. (Short Notes) 3 (S.C.).

“Electrical goods”, meaning of—Tests stated.—It is neither possible nor desirable for the Court to embark on a preparation of an exhaustive list of what constitute “electrical goods” within the meaning of section 3(2)(viii) of the Madras General Sales Tax Act, 1939, nor even is it possible to devise a formula of universal application. The contention that it is only whatever is needed for generating, storing and distributing electricity that can fall within the scope of “electrical goods” is not correct. Only such articles the use of which cannot be had except with the application of electric energy can be termed electrical goods or appliances. The article sold has to be taken as a unit in determining if it comes within the description and cannot be split up. The words that follow the expression “electrical goods” in section 3(2)(viii) are illustrative and not exhaustive in their scope. For the purposes of taxation the unity of the goods sold should not be impaired and if a machine taken as a whole does not fall within the category of “electrical goods”, a component part thereof, which is not sold as an independent item of goods cannot be treated as the goods sold.—*WILLIAM JACKS AND CO., LTD., MADRAS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 301: [1956] 7 327 (Mad.).

—Cycle lamps fitted with electric batteries—Whether electric goods.—Cycle lamps fitted with electric batteries are electric goods and should be classed as such and tax levied at the rates applicable to electric goods.—*THE BOMBAY CYCLE STORES LTD. v. THE STATE* [1952] N.L.J. 97.

—Torch battery cells—Whether electrical goods.—Torch battery cells are electrical goods for the purposes of item No. 30 of the Schedule of the rate of tax published on 22nd May, 1950, by the Madhya Bharat Government.—*BANSILAL AGARWAL AND BROS. v. COMMISSIONER OF SALES TAX, MADHYA BHARAT, GWALIOR* [1958] 9 S.T.C. 100 (M.P.).

—Lathe driven by electrical energy—Whether electrical goods.—A lathe, by itself, even though driven by electrical energy will not come within the scope of the expression “electrical goods” in section 3(2)(viii) of the Madras General Sales Tax Act, 1939.—*WILLIAM JACKS AND CO., LTD., MADRAS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 340 (Mad.).

—Welding electrodes—Whether electrical goods.—Welding electrodes are not by themselves

electrical goods and they do not attract entry 41 of Schedule I to the Madras General Sales Tax Act, 1959. *William Jacks and Co., Ltd. v. State of Madras* [1955] (6 S.T.C. 301) and [1960] (11 S.T.C. 340) referred to.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. RAVI AUTO STORES* [1968] 22 S.T.C. 172 (Mad.).

—Arc welding rods—Whether electrical goods.—Arc welding rods are not electrical goods within the meaning of entry 41 of the First Schedule to the Madras General Sales Tax Act, 1959. *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Ravi Auto Stores* [1968] (22 S.T.C. 172) followed.—*THE STATE OF MADRAS v. INDIAN OXYGEN LIMITED* [1968] 22 S.T.C. 476 (Mad.).

Accumulators—Meaning of—Dry battery cells—Whether accumulators—Rate of tax.—Both according to the technical and popular sense in which the word “accumulator” is understood a cell or a battery is an accumulator only when it is possible to recharge it after it gets discharged, whatever may be the process by which it can again be so charged. A cell or battery which cannot again be used as a means of storing electrical energy once it gets discharged is not an accumulator. Dry battery cells described as “Eveready Energisers” and used for transistors and other electronic appliances cannot be recharged when they get discharged and therefore they are not accumulators. They do not therefore fall within item 53 of the Second Schedule of the Mysore Sales Tax Act, 1957, but fall only within the residuary item 61.—*VASTHIMAL JORAJI BHURAL & Co. v. STATE OF MYSORE* [1969] 23 S.T.C. 45 (Mys.).

Electrical energy—Whether goods were used in the generation of electrical energy—Question of fact.—The question whether certain goods are required for use or were used in the generation or distribution of electrical energy within the meaning of clause (a)(iii) of section 2(j) of the Central Provinces and Berar Sales Tax Act, 1947, is not a question of law, much less is it a substantial question of law.—*M. HASSANJEE AND SONS v. THE STATE* [1952] 3 S.T.C. 183.

—Sale of timber for construction of power-house—Whether sale of goods for use “in the generation or distribution of electrical energy”—Whether entitled to deduction from turnover.—The sale of timber for the construction of a power-house cannot be said to have been effected for use “in the generation or distribution of electrical energy” within the meaning of section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948. The sale of only such goods the use of which either results in the generation or in the increase of generation of

electrical energy or which are used either for arranging or facilitating distribution of the energy will fall within the statutory exemption provided in section 5(2)(a)(iv).—*SPEDDING DINGA SINGH & Co. v. THE PUNJAB STATE* [1968] 22 S.T.C. 319 (Punj. and Haryana).

Domestic electrical appliances—Erection of passenger lifts—Whether contract for work, labour and materials—Whether sale of goods—“Domestic electrical appliances”—Whether include passenger lifts.—The applicants, a firm of engineers, installed certain passenger lifts at a number of premises at Bombay. The questions were: (i) whether the installation of lifts amounted to sale, and (ii) if so, whether the applicants could be assessed to special tax under section 6(1)(b) of the Bombay Sales Tax Act, 1946, read with entry 21 of Schedule I after deducting from the total cost 20 per cent. representing labour charges: *Held*, on a consideration of the correspondence between the parties, that there was a sale of the component parts of the lifts to the customers by the applicants prior to the installation of the lifts in the premises for a price equivalent to 80 per cent. of the total price charged and that this amount was subject to sales tax: *Held further*, that passenger lifts did not come under entry 21 of Schedule I and therefore the applicants should be assessed only to the general tax under section 6(1)(a) at the rate of half an anna in the rupee on 80 per cent. of the amounts charged by the applicants to their customers in respect of the supply and installation of the lifts.—*EASTERN ENGINEERS v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 229.

—**Electric fans—Whether domestic electrical appliances.**—Electric fans are domestic electrical appliances within the meaning of entry 52 of Schedule B of the Bombay Sales Tax Act, 1953. It is not necessary that an electrical appliance, in order to satisfy the description of a domestic electrical appliance, must be actually used in the home or the house. What is necessary is that it must be of a kind which is generally used for household purposes. It does not cease to be a domestic electrical appliance, merely because it may also be used at places other than the home or the house. The words “domestic electrical appliances” must be construed according to their proper meaning and no artificially enlarged meaning should be given to them because of the succeeding words of exclusion. But if the words are ambiguous or susceptible of two meanings, the words of exclusion following them not only can but must be taken into account for the purpose of arriving at their true meaning. Words used by

the Legislature in entries in various Schedules to describe different kinds of goods for prescribing different rates of tax should be construed not in any technical or scientific sense but as understood in common parlance.—*VISWA & Co. v. THE STATE OF GUJARAT* [1966] 17 S.T.C. 581 (Guj.).

Electrical contractors—Installation of electrical fittings in houses of customers—Nature of contract—Supply of materials—Whether constitutes sale—Liability to sales tax.—The respondents, who were electrical contractors, undertook the job of installing electrical fittings in the houses of their customers, which involved the supplying and fixing of electrical goods, such as wire, brass clips, wall brackets and tube lights with accessories. The respondents charged their customers consolidated rates for the materials consumed and for the labour involved in carrying out the contracts. The question was whether the supply of materials in carrying out the contracts constituted “sale” liable to sales tax under the Bombay Sales Tax Act, 1959: *Held*, that the transaction of the respondents with their customers was not a purely works contract but a combination of two distinct and separate contracts, one for the supply or the sale of goods for consideration and the other for the supply of work and labour, and that that part of the contract, which consisted in supplying of goods for consideration, was a sale liable to sales tax under the Act.—*COMMISSIONER OF SALES TAX, MAHARASHTRA STATE, BOMBAY v. ARUN ELECTRICS* [1965] 16 S.T.C. 385 (Mah.). On appeal to Supreme Court see next para.

—The appellants, who carried on business as contractors for electric installations, applied under section 52 of the Bombay Sales Tax Act, 1959, for the determination of the question whether the value of the materials consumed in carrying out contracts for electric fittings, in which the rates were, according to the general business practice, consolidated rates for the materials consumed and labour charges, were liable to sales tax, and filed a copy of an invoice which merely set out the amount chargeable to the customer for “supplying and fixing” certain electric fittings and equipment. Without recording any evidence about the terms of the contract, the Deputy Commissioner held that the invoice evidenced two contracts, one for the sale of goods and the other for work to be done in respect of those goods. On appeal, the Sales Tax Tribunal held that the invoice evidenced a single contract; and on a reference the High Court was of the view that the transaction evidenced by the invoice was not a “pure works contract”, but

a combination of two distinct and separate contracts, one for the supply or the sale of goods for consideration, and the other for the supply of work and labour. On appeal to the Supreme Court : *Held*, that the conclusions recorded by the Deputy Commissioner and the Tribunal were based on no evidence, and the High Court should not have recorded an answer on the reference. In answering a question under section 52, especially if it be one of fact or of mixed law and fact, the Commissioner must take evidence, and on that evidence alone he must determine the question. The question whether in respect of a transaction sales tax is exigible may be determined only on the terms of the contract and not from the invoice issued by the person entitled to receive money under the contract. [The Supreme Court accordingly discharged the answer recorded by the High Court on the reference and did not express any opinion on the question whether the view taken by the Tribunal or by the High Court was correct.] Answer recorded by the High Court in *Commissioner of Sales Tax, Maharashtra State, Bombay v. Arun Electrics* [1965] (16 S.T.C. 385) discharged.—*ARUN ELECTRICS, BOMBAY v. COMMISSIONER OF SALES TAX, MAHARASHTRA STATE* [1966] 17 S.T.C. 576 (S.C.).

—*Contracts with Calcutta Corporation for erection of electric lamp posts in streets—Whether involve sale of goods—Liability to sales tax.*—In pursuance of an invitation for tender from the Calcutta Corporation for the installation of electric lamps on its streets, the petitioner submitted its tender and later on entered into a contract with the Corporation. The contract was for execution of the work by piece-work "and the unit of the work was one lamp post to be installed at the specified street according to the standard specification". The rate payable to the petitioner was a lump sum of Rs. 432-4-0 per unit and this sum was "7½ per cent. below the respective rates specified in the departmental estimate". The payment of the sum was to be made "on the completion of the work or on the termination of the agreement". The Chief Engineer was given the power to terminate the agreement on specified notice if the petitioner did not carry out the work in a workmanlike manner and with suitable materials, labour and plant or if the petitioner made delay in taking up, proceeding with or completing the work. Under the terms of the contract, all materials were stipulated to be delivered by the Corporation, but the petitioner might have to supply materials, when the Corporation supply was short and the Engineer allowed the shortage to be made up by the petitioner. In the return

submitted, the petitioner showed that a sum of Rs. 33,578 was realised by the petitioner on account of "sales of goods other than sales involved in the execution of contracts" and paid the tax on this amount. The petitioner further showed the receipt of a sum of Rs. 46,052-2-6 "as the cost of executing contract" and made it clear that this amount was not liable to sales tax and that the petitioner was including it in the return only "under protest": *Held*, (1) that *prima facie* the contract was an entire and indivisible works contract for a lump sum and did not involve any sale of material. The existence of the term for supply of materials in a specified contingency was not enough to enable the respondents to assess sales tax upon any subjective estimate of the value of the materials involved in the execution of the work. It must be further shown by the respondents (the onus to show that being upon the respondents) that such exceptional contingency did take place and that the petitioner did supply a definite quantity of materials and charged their value in the bills; (2) that the respondents could not, in the circumstances of the case, levy tax upon the sum of Rs. 46,052 so long as it was not shown by them that (a) the Corporation failed to supply materials as stipulated in the agreement, (b) that the petitioner did supply materials under the exceptional clause of the agreement under orders of the Engineer, and (c) that the petitioner did, in fact, charge the Corporation any sum, in excess of the stipulated amount of Rs. 432 less 10 per cent., claimed as the value of materials, if any, supplied by the petitioner. If the amount charged by the petitioner was not in excess of the stipulated amount per post, the respondents were without jurisdiction on the basis of the agreement to levy sales tax on the petitioner on account of execution of the contract.—*INDO IMPEX LIMITED v. COMMERCIAL TAX OFFICER AND OTHERS* [1968] 22 S.T.C. 66 (Cal.).

—*Contract by Electric Company for electrification of fourteen-storeyed building and doing some work in power station—Contracts involve supply of electrical materials—Whether works contracts.*—The petitioners, the General Electric Company of India Private Limited, entered into (1) a contract with the Life Insurance Corporation of India for the electrification of the L.I.C. building in Madras, and (2) a contract with the Superintending Engineer, Basin Bridge Power Station. Both the contracts were lump sum contracts and involved high technical skill and knowledge in the matter of designing, erection and completion. They provided for security deposits, delivery periods

and penalty in case of breach. The petitioners contended that the amounts received by them in respect of these contracts were sums received in the execution of works contracts, which did not involve an independent sale of goods or materials, and hence were exempt from taxation: *Held*, that, having regard to the various clauses in the contracts, they were works contracts and did not involve in any manner or in any wise a sale of material and the petitioners were therefore not liable to sales tax.—*GENERAL ELECTRIC COMPANY OF INDIA PRIVATE LTD., MOUNT ROAD, MADRAS v. GOVERNMENT OF MADRAS* [1968] 21 S.T.C. 283 (Mad.).

—*Contract for installation of electrical fittings—Whether works contract or contract involving sale of goods.*—In a case where there is a contract for the execution of a work which involves the supply of materials to be consumed in the execution of the work, and the contract is for the payment of a consolidated sum of money for such work, a finding that there was a contract for the sale of the materials supplied as accessories can be supported only if there was a contract for the sale of specific goods for a price, and the property in the goods contracted to be sold passed to the other party when the goods were delivered in pursuance of the contract.—*EASTERN ENGINEERING WORKS v. THE STATE OF MYSORE* [1968] 21 S.T.C. 193 (Mys.).

EMBROIDERY

Charges collected for carrying out embroidery work—Charges collected by an assessee for carrying out embroidery work on the material supplied to him by his customers cannot be assessed to sales tax inasmuch as such contracts do not involve the sale of any goods of the assessee to the customers.—*APPASAMY & SONS v. THE STATE OF MADRAS* [1959] 10 S.T.C. 170 (Mad.).

Dealer in cloth selling zari embroidered pieces of silk cloth—*Bills showing price according to weight of zari—Whether a works contract—Liability to sales tax—Applicability of item 4, Third Schedule, and item 19, First Schedule, Madras General Sales Tax Act (1 of 1959).*—The assessee, a dealer in cloth and ready-made garments, sold to customers zari embroidered pieces of silk cloth and in the bills issued to them the particular description of the embroidery was given and a price was fixed according to the weight of the zari. It was found that the customers did not supply the cloth for the embroidered pieces and that the value of cloth was very little when compared with the value of the zari work done on the pieces: *Held*, (1) that this was not a contract for work and labour but a sale liable to sales tax; (2) that

item 4 of the Third Schedule to the Madras General Sales Tax Act, 1959, which exempted all varieties of textiles, was not applicable as the embroidery by zari design on the cloth had materially altered the nature of the goods sold. Further the assessee used silk cloth and not cotton and item 4 excluded from its scope silk cloth; (3) that item 19 of the First Schedule, which provided zari as an item of goods assessable at the point of first sale in the State, could not also be applied to the present case as what was sold was not zari, but zari thread embroidered into attractive designs or patterns on silk cloth. *Kailash Nath v. State of U.P.* [1957] (8 S.T.C. 358) and *Kittappa Dress M. & E. Works v. State of Madras* [1962] (13 S.T.C. 34) distinguished.—*M. ABDUL HAMEED SAHIB v. THE STATE OF MADRAS* [1965] 16 S.T.C. 822 (Mad.).

Embroidering cloth with gold jari—Messrs Royal Gold Embroidery carried on business of embroidering cloth with gold jari. Their customers Messrs Hasmukhlal & Brothers, who were themselves dealers in embroidered saris, supplied to the assessee Royal Gold Embroidery, plain silk saris which the assessee embroidered with gold jari purchased by him on his own account. The embroidered saris were then returned to the customers against payment of a consolidated sum which the assessee called the labour charges. These charges included the cost of the jari and the charges for the services rendered. The Sales Tax Authorities sought to include the consolidated charges paid by the customers to the assessee in his turnover. The assessee contended that the contract under which the embroidery work was done was purely a service contract and not a contract of sale. The Collector of Sales Tax, however, held that the charges paid to the assessee for the work done by him were liable to be included in his turnover. The Sales Tax Tribunal held that the ascertained or estimated price of the gold thread supplied by the assessee was liable to be included in the turnover and the charge attributable to the services rendered was not liable to be so included. The learned Judges did not decide the reference as there were not sufficient materials to answer the question referred to them and called for a supplemental statement of the case from the Tribunal. But, though they did not finally decide the question referred to them, they observed that the question whether the contract was one of sale or a composite contract for the sale of goods and a contract for the performance of service could not be decided on the application of any one single test. The value of the particular material supplied by the customer on which the embroidery work

was done in its relation to the materials supplied by the assessee for performing the services was, though not conclusive, an important test. Similarly, the question as to the relative importance of the materials supplied by the assessee and the value of the work done by him had also to be viewed in its proper context to ascertain whether the contract was one purely for sale or a composite contract for sale and for performance of service or a contract entirely for service. They, however, emphasized that though these would be important indications, the real test was one of intention of the parties and a conclusion as to such intention could only be reached from all the facts and circumstances of the case.—**ROYAL GOLD EMBROIDERY v. THE STATE OF BOMBAY** (Sales Tax Reference No. 6 of 1959 decided by Shah and S. T. Desai, JJ., on 9th July, 1959) cited in **A. A. Jariwala v. State of Gujarat** [1965] 16 S.T.C. 942 (Guj.).

—Customers sent saris to the applicants for getting embroidery work on the saris with instructions regarding the designs required on those saris. The applicants gave the jari materials and the saris to the workers doing the job work in their own houses and gave them piece rates according to the work done by them. After completion of the embroidery work on the saris, the applicants returned the saris to the customers along with a consolidated bill for the entire work done by them. The question was whether the contract between the applicants and their customers was a works contract, or was a composite agreement, one for the sale of the jari materials and another for doing work: *Held*, that the contract was one and indivisible and was not separable into two contracts one for service and the other for the sale of the jari materials. The contract essentially was one of work and labour and the supply of jari materials in the execution of the embroidery work was merely ancillary.—**A. A. JARIWALA AND BROS. v. THE STATE OF GUJARAT** [1965] 16 S.T.C. 942 (Guj.).

ENTRIES IN SCHEDULE

(See WORDS AND PHRASES)

ESSENTIAL GOODS

Acts imposing sales on essential goods—Validity.—See CONSTITUTION OF INDIA, Article 286(3), pages 391-397 *supra*.

ESTOPPEL

Estoppel against statute—There can be no estoppel against a statute. If the law requires that a certain tax is to be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government,

whenever it chose to collect it.—**MATHRA PARSHAD & SONS v. STATE OF PUNJAB** [1962] 13 S.T.C. 180 (S.C.).

—*Opinion expressed that dealer is not liable—Whether operates as estoppel.*—There can be no estoppel against a statute. Where under the provisions of an Act a dealer is under a liability to pay tax on his turnover, it is not competent for any official of the department to release the dealer from payment of such tax. Such a release will be null and void and cannot be relied upon by the dealer to avoid payment of tax. The petitioner, an oil miller dealing in groundnuts and groundnut oil, claimed rebate under the Hyderabad General Sales Tax Act, 1950, on the basis of an opinion expressed by the Deputy Commissioner of Commercial Taxes to the effect that an oil miller purchasing groundnut after paying sales tax at the purchase point and effecting sales of oil after crushing the same quantity of groundnut in his mills would get rebate to the extent of tax payable to the oil millers and ghanawallas having more than one ghana. There was, however, no provision in the Act under which such relief could be claimed: *Held*, that the opinion expressed by the officer did not preclude the Government from levying tax on such oil.—**VENKATESWARA OIL MILLS v. THE STATE OF ANDHRA PRADESH** [1960] 11 S.T.C. 555 (A.P.).

—*Order of assessment—Whether operates as estoppel for subsequent years.*—An order of assessment or an order of the Appellate Tribunal on appeal fixing the liability to tax in a particular year does not operate as *res judicata* or estoppel so as to prevent that decision from being reopened in assessments for subsequent years.—**THE STATE OF ANDHRA v. ARISSETTY SRIRAMULU** [1957] 8 S.T.C. 153 (Andh.) (F.B.).

—Tax paid under provision of law subsequently held to be unconstitutional—Liability of Government to refund tax collected—Applicability of doctrine of estoppel.—See MISTAKE OF LAW.

—Settlement between department and assesses and issue of instructions to officers in accordance with the decision—Subsequent decision of Supreme Court—Issue of fresh instructions to officers to assess hire-purchase transactions—Legality.—See **INSTALMENT SUPPLY (PVT.) LTD. v. UNION OF INDIA** [1961] 12 S.T.C. 489 (S.C.).

—Assessee having office in Travancore-Cochin State and Malabar area of Madras State—Formation of Kerala State and merger of Malabar area in that State—Same turnover assessed by officers

of both States—Principles of estoppel—Whether would apply.—See SHANMUGHA VILAS CASHEW FACTORY v. STATE OF KERALA [1960] 11 S.T.C. 367 (Ker.).

—There is no estoppel in tax cases and therefore the fact that the petitioners, owning a chain of hotels, had been submitting returns and were being assessed to sales tax on a notional basis on the sale of foodstuffs did not preclude them from contending that no sale of food took place when they realised from their guests a consolidated charge for lodging, meals and other amenities.—STATE OF PUNJAB AND ANOTHER v. ASSOCIATED HOTELS OF INDIA LTD. [1967] 20 S.T.C. 1 (Punj. and Haryana).

—The rule of estoppel may arise on a statement of fact on the basis of which a person took some action or omitted to take action and therefore the State may not be permitted to say that the purchasing dealer in fact did not get himself registered. But the question as to whether such registration is valid or not is a pure question of law and the rule of estoppel will not apply.—NOWRANGLAL AGARWALA v. STATE OF ORISSA [1965] 16 S.T.C. 271 (Ori.).

—Mistake of law—Refund—Writ petition—Rule of estoppel—Import sales claimed to be covered by *Khosla's* case—Writ petition for quashing assessment orders and refund of tax paid—Maintainability.—ASEA ELECTRIC (INDIA) PRIVATE LIMITED AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION I, MADRAS-1, AND OTHERS [1969] 23 S.T.C. 160 (Mad.).

EVASION OF TAX

Check post and barriers—Erection of check posts and barriers—Powers of officer under section 28(3), U.P. Act.—Sub-section (3) of section 28 of the U.P. Sales Tax Act, 1948, only gives power to the officer in charge of a check post, in order to satisfy himself that the provisions are not being contravened, to intercept and search any vehicle. It does not give him any power to make and endorsement on the receipts to the effect that the delivery itself will not be made except in the presence of the Sales Tax Officer. Such an endorsement is likely to result in delay of the delivery and affects the rights of the petitioner to carry on his business. It is therefore not necessary for him in order to get relief under Article 226 of the Constitution to give any further facts.—JAI NARAIN v. ASSISTANT SALES TAX OFFICER [1957] 8 S.T.C. 795 (All.).

—Condition precedent for taking action by way of confiscation.—The proviso in section 16A of the

General Sales Tax Act, 1125, is a proviso for the entire sub-sections (1) to (5) and not a proviso for sub-section (5) alone. Therefore before taking action by way of confiscation of goods either by virtue of the powers vested under sub-section (4) or sub-section (5) of section 16A of the Act, there is a duty or an obligation on the part of the officer to give the person affected, an opportunity of being heard and there is a further obligation and duty on the part of the officer to make an inquiry in the manner prescribed. Only after that stage is over the second stage starts, namely of deciding about confiscation. It is only when that stage is reached that sub-section (6) of section 16A comes into play, when also there is a duty cast upon the officer to give an option to the person concerned to pay, in lieu of confiscation, any amount not exceeding four times the tax. If the mandatory requirements under the proviso are not taken into account by the officers, the issue of notice for taking action under sub-section (6) of section 16A will be illegal.—KESAVA PANICKER AND OTHERS v. STATE OF KERALA AND ANOTHER [1962] 13 S.T.C. 170 (Ker.).

—Confiscation of goods—Necessity to give notice to person affected.—Before any order of confiscation under section 42(3) of the Madras General Sales Tax Act, 1959, can be passed, there has to be an enquiry and of this enquiry due notice has to be given to the person affected, *viz.*, the person having the beneficial interest in the goods. If the officer reaches the conclusion that the goods are liable to be confiscated, he has further to give a notice to the person affected giving him an option to pay monetary penalty in lieu of confiscation. Where the lorry driver has furnished full particulars of the owner of the goods, the issue of notice and collection of compounding fee from the lorry driver is not in accordance with the provisions of the Act.—MEENAMBIKA COMPANY v. THE STATE OF MADRAS [1963] 14 S.T.C. 817 (Mad.).

—Option to pay tax and penalty—Whether appeal lies to Appellate Assistant Commissioner.—An order under section 42(3) of the Madras General Sales Tax Act, 1959, stating that if the assessee fails to pay the tax and the penalty mentioned therein, his goods will be confiscated is an order which comes within the scope of section 31 enabling the assessee to file an appeal before the Appellate Assistant Commissioner.—DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION v. S. KRISHNASWAMI CHETTIAR [1963] 14 S.T.C. 598 (Mad.).

—Confiscation—Penalty in lieu of confiscation—Collection of penalty from owner of lorry—Legality

—*Necessity to record finding that owner of lorry is dealer or owner of goods.*—Under the terms of section 42(3) with the provisos of the Madras General Sales Tax Act, 1959, read with rules 36(2) and 35 of the Madras General Sales Tax Rules, 1959, penalty in lieu of confiscation can only be imposed on the dealer or the owner of the goods and, in the absence of a finding that the owner of the lorry is either a dealer or owner of the goods, penalty cannot be collected from the owner of the lorry through his driver. The revenue is not at liberty to accept money from anyone. It can do so only from the owner or dealer of the goods in lieu of confiscation. Nor can the revenue saddle on the owner of the lorry without his being a dealer or the owner of the goods, with the liability to penalty in lieu of confiscation on the ground that he failed to assist the department to find the real dealer or the owner of the goods.—*A.B.A. AZEEZ KHAN SAHIB v. THE STATE OF MADRAS* [1967] 20 S.T.C. 213 (Mad.).

Check posts and barriers—Provisions in Act and Rules for setting up check posts and barriers—Whether void and unenforceable.—*RAMA TRANSPORT CO. (PRIVATE) LTD. v. THE STATE OF UTTAR PRADESH AND OTHERS* [1957] 8 S.T.C. 725 (All.). See page 321 *supra*.

—Validity of provisions relating to check posts and barriers—Constitution of India, Arts. 14, 301—*Kerala General Sales Tax Act* (XV of 1963), Secs. 29, 30, 31. *Rama Transport Co. (Private) Ltd. v. State of Uttar Pradesh and Others* [1957] (8 S.T.C. 725; A.I.R. 1957 All. 448) relied on.—*SREE NARAYANA TRANSPORTS v. STATE OF KERALA* [1965] 16 S.T.C. 659 (Ker.). See page 322 *supra*.

—Erection of check-posts and barriers—Provisions in section 28-A, Mysore Act—Whether *ultra vires* Legislature—Whether impose unreasonable restriction on fundamental rights of individuals—*Mysore Sales Tax Act* (25 of 1957), Sec. 28-A—Constitution of India, Articles 19(1)(g), 301, 304; Schedule VII, List II, Entry 54.—*P. VENKATACHALAPATHI AND OTHERS v. COMMERCIAL TAX INSPECTOR, INTELLIGENCE SECTION, AND OTHERS* [1965] 16 S.T.C. 894 (Mys.). See page 322 *supra*.

Power of inspection, search, seizure and confiscation—Validity of provisions in Madras Act—Whether unconstitutional and *ultra vires* Legislature—Search, seizure and confiscation—Whether fall within entry 54, List II, Schedule VII—Investiture of unrestricted power of search on all officials—Whether amount to unreasonable restriction and offends Article 19(1)(f) and (g)—Scope and extent of power of inspection in section 41(1)—Search and seizure

—Applicability of provisions of Criminal Procedure Code (5 of 1898)—Interpretation of Statutes—Scope of proviso—"Inspect", "search", "seizure"—Meanings of—*Madras General Sales Tax Act* (1 of 1959), Sec. 41(1), (2), (3), (4)—Constitution of India, Art. 19(1)(f), (g), (5); Schedule VII, List II, Entry 54.—*SHRI RAMKISHAN SRIKISHAN JHAVER AND OTHERS v. COMMISSIONER OF COMMERCIAL TAXES AND OTHERS* [1965] 16 S.T.C. 708 (Mad.) See page 323 *supra*.

—Validity of provisions in Madras Act—Whether unconstitutional—Search and seizure—Whether ancillary provisions to check evasion of tax and reasonable restrictions on fundamental right—Confiscation—Provision for payment of tax on goods confiscated and additional sum in lieu of confiscation—Whether void for repugnancy—Whether affects entire provision for confiscation—Applicability of provisions of Criminal Procedure Code to searches under the Act—Issue of defective search warrant—Effect—*Madras General Sales Tax Act* (1 of 1959), Sec. 41—Constitution of India, 1950, Art. 19(1)(f), (g), (5), (6).—*COMMISSIONER OF COMMERCIAL TAXES AND OTHERS v. RAMKISHAN SHRIKISHAN JHAVER AND OTHERS* [1967] 20 S.T.C. 453 (S.C.). See page 324 *supra*.

—Power to seize and confiscate goods—Provisions in Act and Rules—Whether *ultra vires* State Legislature—Search, seizure and confiscation—Whether fall under Entry 54, List II, Schedule VII, Constitution of India—Investiture of power on all officials of department—Whether infringes Articles 14 and 19(1)(f), (g), Constitution of India—Scope of sections 28(6) and 29(3), *Andhra Pradesh General Sales Tax Act* (6 of 1957)—*Andhra Pradesh General Sales Tax Rules, 1957, Rules 45, 46, 48.*—*K. S. PAPANNA AND ANOTHER v. DEPUTY COMMERCIAL TAX OFFICER, GUNTAKAL, AND OTHERS* [1967] 19 S.T.C. 506 (A.P.). See page 325 *supra*.

—Seizure and confiscation under section 42(3), *Madras General Sales Tax Act* (1 of 1959)—Legality.—*K. P. ABDULLA & BROS. v. CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE* [1968] 22 S.T.C. 260 (Mad.). See page 325 *supra*.

—Power to seize and confiscate goods—Whether ancillary or incidental power to levy sales tax—Provisions of section 42(3) providing for seizure and confiscation—Whether unconstitutional and invalid—*Madras General Sales Tax Act* (1 of 1959), Secs. 41(4), 42(3).—*K. P. ABDULLA & BROS. AND ANOTHER v. THE CHECK POST OFFICER, KANDAIGOUNDANCHAVADI, COIMBATORE, AND OTHERS* [1968] 22 S.T.C. 552 (Mad.). See page 325 *supra*.

—Seizure and confiscation—Whether incidental and ancillary power to levy sales tax—Actual evaders of tax and attempted evaders—Whether reasonable classification—Provisions of sections 28(6), 29(3) and (4)—Whether violate Article 14, 19(1)(f), (g) or 31—Confiscation and criminal prosecution—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 14, 28(6), 29(3), (4)—Constitution of India, Articles 14, 19(1)(f), (g), 31(2), (5).—KALANGI KRISHNA MURTY & CO. AND OTHERS *v.* THE COMMERCIAL TAX OFFICER, GUNTUR, AND OTHERS [1968] 22 S.T.C. 540 (A.P.). See page 326 *supra*.

Section 19(c), Kerala Act—Whether penalises obstruction to seizure under section 17(2A)—Whether section 17(2A) offends Article 19(1)(f) and (g), Constitution, and is ultra vires Legislature—Section 19(c) of the General Sales Tax Act, 1125 (Kerala), penalises only prevention or obstruction of the inspection or entry by the officer. It does not penalise obstruction to seizure under section 17(2A). Section 17(2A) was inserted in the Act by section 11(i) of Act 18 of 1955 and the Legislature has not introduced a corresponding change in section 19(c) by penalising the obstruction to seizure as well. Section 17(2A) does not offend Article 19(1)(f) and (g) of the Constitution and is therefore not ultra vires the Legislature.—M. P. KANNAN AND ANOTHER *v.* STATE OF KERALA [1966] 17 S.T.C. 543 (Ker.).

Fraudulent evasion of tax—Forgery—Whether conviction proper.—JAGANNATH PRASAD *v.* STATE OF UTTAR PRADESH [1963] 14 S.T.C. 536 (S.C.).

Lawful evasion of tax—It is a fundamental rule that all taxes can be lawfully evaded. It is only where the evasion is unlawful that the rule that a taxing statute must be interpreted in favour of the subject and against the State cannot be applied. Where the evasion is because of the bar of limitation, it cannot be said to be unlawful.—RAMESHWAR LAL SARUP CHAND *v.* SHRI U.S. NAURATH, EXCISE AND TAXATION OFFICER, ASSESSING AUTHORITY, AMRITSAR, AND ANOTHER [1964] 15 S.T.C. 932 (Punj.) (F.B.).

Offences—Arrears of sales tax—Mere failure to pay tax after service of demand notice—Whether an offence under section 45(2)(b), Madras General Sales Tax Act (1 of 1959)—Fraudulent intent necessary.—S. R. SWAMY, *In re* [1967] 19 S.T.C. 261 (Mad.).

EXCISE DUTY

(See also SALES TAX)

Additional duty of excise—Construction of notification granting exemption—Goods not subject to levy of excise duty under clause 3, Additional Duties of

Excise (Levy and Distribution) Bill, 1957—Whether entitled to exemption—Interpretation of taxing statutes—Andhra Pradesh General Sales Tax Act (VI of 1957), Secs. 5, 9—Notification G. O. Ms. No. 2328, Revenue, dated 13th December, 1957.—A notification granting exemption from sales tax issued by the Government of Andhra Pradesh under section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957, was as follows:—"In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957.....the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, with effect on and from the 14th December, 1957, the sale or purchase of any of the goods appended hereto: Provided that in the case of any class of such goods in respect of which additional duties of excise are leviable by the Central Government under clause 3 of the Additional Duties of Excise (Levy and Distribution) Bill, 1957, read with section 4 of the Provisional Collection of Taxes Act, 1931,.....the exemption shall be subject to the following conditions, namely:—(1) The dealer shall prove to the satisfaction of the assessing authority that additional duties of excise have been so levied and collected on such goods by the Central Government in default of which the dealer shall be liable to pay the tax under the said Act in respect of such goods. (2) Any dealer who is so liable to pay the tax may, at his option, pay, in lieu thereof a lump sum by way of composition determined in the manner specified in condition (3)....." The first clause of the appendix to the notification was as follows:—"All varieties of textiles, viz., cotton, woollen or silken including rayon, art silk or nylon, whether manufactured by handloom, powerloom or otherwise." The appellants doing business in the purchase and sale of textile goods claimed exemption from sales tax in respect of the goods in stock with them. The goods were, however, not subject to excise duty or the additional excise duty under clause 3(1) of the Additional Duties of Excise (Levy and Distribution) Bill, 1957. The respondents contended that if the exemption provision contained in the first paragraph of the notification was to operate, the goods must have been such that it was liable to the tax under clause 3(1) of the Bill and that as this condition was not satisfied in the case of the appellants, the exemption provision did not apply to them: Held, (1) that the operative words of the notification were to be found in the first paragraph granting the exemption and the appellants were within that provision. As the proviso could not apply to cases where an additional duty of excise was not leviable under clause 3 of the Bill, the operation of the exemption was unaffected by

the proviso and the appellants were therefore entitled to relief from sales tax granted by the notification; (2) that the object behind the framers of the notification may be to avoid double taxation, but the operation of an enactment or of a notification has to be judged not by the object which the Legislature or the notifying authority, as the case may be, may have had in mind but by the words which it has employed to effectuate the legislative intent. Statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, alter, or qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning. There is no equity in a taxing statute and either the subject is within it or not, on the words of the enactment or the rules validly made thereunder. In a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the words of the provision. If the taxpayer is within the plain terms of the exemption he cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the statute or rule or by necessary implication therefrom, the matter is different. *Salomon v. Salomon and Co.* ([1897] A.C. 22) referred to.—*INNAMURI GOPALAM AND MADDALA NAGENDRUDU AND OTHERS v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1963] 14 S.T.C. 742 (S.C.).

—Hand-made *biris*—Word “tobacco” in section 7, Additional Duties of Excise (Goods of Special Importance) Act, 1957—Whether includes hand-made *biris*—Restrictions under section 15, Central Sales Tax Act—Whether apply.—*KATYAR & Co. v. SALES TAX OFFICER, FATEHGARH, AND ANOTHER* [1963] 14 S.T.C. 133 (All.) (page 240 *supra*).

—Restrictions and conditions specified in section 15, Central Sales Tax Act, 1956—Whether apply when Additional Duties of Excise (Goods of Special Importance) Act, 1957, was passed or only when section 15 was brought into force.—*STATE OF ORISSA v. BHIMA PATRA* [1963] 14 S.T.C. 512 (Ori.) (page 240 *supra*).

—Stock of grey or unfinished cloth on appointed day and not become liable to additional excise duty sold after process of bleaching, dyeing and printing—Liability to sales tax—Scope of section 4(1) and (2), Bombay Sales Tax Laws (Special Exemptions) Act, 1957—Whether processed cloth a different commercial

commodity—*Bombay Sales Tax Act (3 of 1953) —Additional Duties of Excise (Goods of Special Importance) Act, 1957.—AHMEDABAD SILK FACTORY PRIVATE LTD. v. COMMISSIONER OF SALES TAX, GUJARAT STATE, AHMEDABAD* [1966] 18 S.T.C. 23 (Guj.) (page 257 *supra*).

—*Manufacture of woollen blankets—Duty imposed under Additional Duties of Excise (Goods of Special Importance) Act (58 of 1957)—Whether sales tax—Whether woollen blankets tax-free goods—Provisions in Act resulting in purchase of goods from adjoining State in order to avoid higher rate of tax inside State—Whether violative of Article 301, Constitution of India—Statement of objects and reasons in statute—Whether controls plain meaning of statutory language.*—The petitioner, a registered dealer under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956, dealt in the manufacture and sale of woollen blankets. After the enactment of the Additional Duties of Excise (Goods of Special Importance) Act (58 of 1957), the Punjab Legislature passed the Punjab Textiles and Sugar (Existing Stocks) Purchase Tax and Miscellaneous Provisions Act (8 of 1958), section 20 of which amended, *inter alia*, Schedule B to the East Punjab General Sales Tax Act, 1948, by including woollen textiles in the list of tax-free goods within the contemplation of section 6 of that Act. The petitioner contended: (1) that the additional duty of excise levied under the Central Act 58 of 1957 amounted in pith and substance to a tax under the Punjab General Sales Tax Act, 1948, and, therefore, the blankets could not be considered to constitute tax-free goods within the meaning of the latter statute; (2) that by imposing tax on the goods which were to be used by the petitioner in the manufacture of blankets in the State of Punjab at a higher rate than the rate in the adjoining State of Delhi, the petitioner was forced to purchase the goods from Delhi in preference to their purchase in the State of Punjab itself and this amounted to placing some kind of a curb or a restriction on trade, commerce and intercourse between the Punjab State and the adjoining State which was violative of the constitutional mandate in Article 301 of the Constitution: *Held*, (1) that Central Act 58 of 1957 did not impose a tax on the transaction of sale or purchase at all, but imposed only a duty of excise. In pith and substance excise duty and sale or purchase tax are essentially different. Merely because an excise duty is intended to replace a sale or purchase tax does not of itself by any logic, convert the former into the latter. Woollen textiles were therefore tax-free goods within the contemplation of section 6 of the

East Punjab General Sales Tax Act, 1948; (2) that if the petitioner was, for economic reasons, feeling impelled in order to make more profit, to buy the goods required in the manufacture of blankets in the adjoining area and bring them in the State of Punjab for consumption or use, it was a matter of his choice. This would not restrict the freedom of trade, commerce and intercourse between States *inter se* or throughout the territory of India guaranteed by the Constitution. Objects and reasons of a statute cannot control the plain meaning of statutory language; they can only be referred to for the limited purpose of discovering the historical background leading up to the legislation in order to understand the mischief sought to be remedied, and that too if there is some ambiguity in the language of the Act. There was no ambiguity in the statutory language of Central Act 58 of 1957 and the duty of excise sought to be imposed could by no stretch be considered, because of the statutory objects and reasons, to be a tax either on sale or purchase of goods. What in reality facilitates trade and commerce is not a restriction and it is only what in reality hampers or burdens trade or commerce that can amount to a restriction. It is the reality or the substance of the matter that has to be determined. It is not possible *a priori* to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade; but the distinction is real and clear. For the tax to become a prohibited tax, it has to be a direct tax, the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory, it cannot operate as a hindrance.—*EVEREST WOOLLEN MILLS v. THE STATE OF PUNJAB AND ANOTHER* [1966] 18 S.T.C. 69 (Punj.).

—Declared goods—*Khandsari* sugar—Levy of sales tax—Restrictions and conditions—“Successive” in section 3-A, U.P. Act—Meaning of—Whether includes manufacturer-dealer—Legality of levy of sales tax on *khandsari* sugar for period 1st April, 1958 to 28th February, 1959—U.P. Sales Tax Act (15 of 1948), Secs. 3, 3-A—Additional Duties of Excise (Goods of Special Importance) Act, 1957, Sec. 7—Central Sales Tax Act (74 of 1956), Sec. 15—Constitution of India, Article 286(3).—*RAM KUMAR RAJENDRA SWAROOP v. COMMISSIONER OF SALES TAX* [1967] 19 S.T.C. 241 (All.) (see page 242 *supra*).

—*Snuff*—Whether tobacco—Whether liable to sales tax—Declared goods—Rate of tax—Bengal Finance (Sales Tax) Act, 1941—Bengal Sales Tax Rules, 1941, Rule 3(28)—Additional Duties of Excise

(Goods of Special Importance) Act, 1957.—The petitioner carried on the business of sale in West Bengal of snuff manufactured outside the State by manufacturers who had to pay duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The petitioner claimed that snuff being tobacco was not taxable under the Bengal Finance (Sales Tax) Act, 1941: *Held*, that snuff was included in the definition of tobacco as given in item 9 of the First Schedule to the Central Excises and Salt Act, 1944, and therefore sales of snuff should be deducted from the gross turnover of the petitioner under rule 3(28) of the Bengal Sales Tax Rules, 1941. With effect from 1st April, 1958—the date specified in section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957—section 5(1) of the Bengal Act, which was in excess of the limit of 2 per cent. laid down by the Central Sales Tax Act, 1956, became *ultra vires* and invalid, and remained to be so until that provision was amended by the West Bengal Act XIII of 1959.—*SM. PARUL LATA CHAKRAVARTY v. COMMERCIAL TAX OFFICER AND OTHERS* [1966] 17 S.T.C. 116 (Cal.).

—*Biris*—Additional Central excise duty—Notification granting conditional exemption—Applicability of notification—Liability to sales tax.—Notification No. ST.-905/X dated 31st March, 1956, issued by the State Government under section 3-A of the U.P. Sales Tax Act, 1948, levied tax at the rate of one anna per rupee on the turnover of *biris* at the point of sale mentioned in it. Subsequently Notification No. ST-4485/X dated 14th December, 1957, issued by the State Government under section 4(1)(b) exempted the turnover of *biris* from sales tax provided additional Central excise duty had been paid on such *biris* and the dealer furnished proof to the satisfaction of the assessing authority that the duty had been paid: *Held*, (1) that as under the second notification, exemption was available only on proof of payment of the additional duty of excise, the decision in *Innamuri Gopalam v. State of Andhra Pradesh* [1963] (14 S.T.C. 742) was of no assistance to the assessee, and unless payment of the additional duty was established, the assessee could not avail of the benefit of the exemption granted by that notification; (2) that where the conditions mentioned in the second notification were absent, the exemption mentioned therein would not be attracted and the earlier notification would operate. The validity of a notification cannot be assailed in a reference arising out of an order of an authority created by a statute under which the notification has been made.—*ANWAR KHAN MEHBOOB Co. v. THE COMMISSIONER OF SALES TAX, U.P.* [1969] 24 S.T.C. 20 (All.).

Deductions—Assessment under Central Sales Tax Act—Excise duty paid to Central Government—Whether can be deducted.—See pages 231-232 *supra*.

—The assessee contended that as the word “levied” in section 9(2) of the Central Act meant levied under the State Act, the benefit of rule 6(f) of the Madras General Sales Tax Rules, 1959, relating to the deduction of excise duty from the taxable turnover should be given to them when they were assessed to tax under the Central Sales Tax Act, 1956, on their inter-State sales: *Held*, that as the Rules framed under the Central Act did not provide for such deduction in determining the aggregate turnover of inter-State sales, the assessee was not entitled to the deduction of excise duty.—*M. A. KHADER & CO. AND OTHERS v. THE STATE OF MADRAS AND OTHERS* [1966] 17 S.T.C. 396 (Mad.).

—In the matter of non-deductibility of excise duty from the turnover of inter-State sales, the Central Act has equal application and makes no discrimination and there is, therefore, no question of inequality or discrimination forbidden by Article 303(1) and there is no question of contravention of Article 301 either. While under the Madras General Sales Tax Act the excise duty is deductible from the turnover, no such provision has been made for deduction of the excise duty from the turnover of inter-State sales or purchases under the Central Act with the result unequal burden will fall on differences in the quantum of turnover because of allowance in the one case and disallowance in another, of deduction of excise duty. That will impede the freedom of inter-State trade, commerce and intercourse under Article 301 of the Constitution and is not saved by Article 303.—*LARSEN AND TOUBRO LTD., MADRAS-2, AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2, AND OTHERS* [1967] 20 S.T.C. 150 (Mad.). On appeal to Supreme Court this decision was reversed. See below :—

—In the matter of determining the taxable turnover the same rules will apply by virtue of section 9(1) of the Central Sales Tax Act, whether the tax is to be levied under the Central Sales Tax Act or the General Sales Tax Act. If under the Madras General Sales Tax Act, in computing the turnover, excise duty is not liable to be included and by virtue of section 9(1) of the Central Sales Tax Act, Central sales tax has to be levied in the same manner as under the Madras Act, the excise duty will not be liable to be included in the turnover for the purposes of Central sales tax. Decision of the

Madras High Court in *Larsen and Toubro Ltd., Madras-2, and Others v. Joint Commercial Tax Officer, Mount Road II Division, Madras-2, and Others* [1967] (20 S.T.C. 150) reversed.—*THE STATE OF MADRAS v. N. K. NATARAJA MUDALIAR* [1968] 22 S.T.C. 376 (S.C.).

—**Royalty**—Whether excise duty.—The royalty paid by the petitioner, dealer in iron ore, to the State Government was not excise duty paid to the Central Government and therefore the petitioner was not entitled to deduct it from the gross turnover under rule 2(1)(i) (in Schedule II) of the Rules framed under the Mysore Sales Tax Act, 1948.—*V. VEDAVYASACHARYA v. THE STATE OF MYSORE* [1962] 13 S.T.C. 465 (Mys.).

—**Commission agent**—Assessment as dealer—Whether excise duty paid on goods by principal can be deducted from turnover.—A commission agent assessed as a dealer under the Madras General Sales Tax Act, 1959, in respect of transactions on behalf of his principal is entitled to deduct from the turnover, the excise duty paid on the goods by the principal.—*RAMALAKSHMANA AND COMPANY AND ANOTHER v. THE STATE OF MADRAS* [1968] 21 S.T.C. 34 (Mad.).

Exemption—Drugs and toilet preparations containing alcohol—Levy of excise duty—Whether articles exempt from sales tax.—*THE STANDARD DRUGS CO. v. THE STATE OF PUNJAB* [1961] 12 S.T.C. 446 (Punj.).

—Medicinal preparations containing spirit—Whether entitled to exemption under section 4, Madras General Sales Tax Act (IX of 1939).—*ALEMBIC DISTRIBUTING AGENCY v. STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 15 (A.P.).

—Exemption—Goods on which duty is levied under Punjab Excise Act, 1914—Imposition of duty on medicinal preparations containing alcohol under Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955) which repealed the Excise Act—Whether such preparations entitled to exemption—“Former enactment” in section 8, General Clauses Act (10 of 1897) Meaning of.—*THE PUNJAB STATE AND OTHERS v. SUKH DEV SARUP GUPTA* [1965] 18 S.T.C. 426. (Punj.).

—Medicinal preparations containing alcohol—Whether exempt after enactment of Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955)—Scope of section 8, General Clauses Act (10 of 1897)—“Repeals and re-enacts”, meaning of.—*C. P. and Berar Sales Tax Act* (21 of 1947), Sec. 6, Sch. II, Entry 32—*Madhya Pradesh General Sales Tax Act* (2 of 1959), Sec. 10(1), Sch. I, Entry 23.—*VINO CHEMICAL & PHARMACEUTICAL WORKS v. THE SALES TAX*

OFFICER, RAIPUR, MADHYA PRADESH, AND ANOTHER [1966] 18 S.T.C. 466 (M.P.).

Foreign liquor—Whether subject to any duty of excise and exempt under section 8, Madras Act—Whether taxable under section 3—Rate of tax on inter-State sales of foreign liquor not supported by C Forms—Nature of tax imposed under section 21-A, Madras Prohibition Act, 1937.—Entry 3 in the Third Schedule to the Madras General Sales Tax Act, 1959, which exempts liquor, does not cover foreign liquor imported into India inasmuch as foreign liquor is not subject to any duty of excise. Therefore foreign liquor as such is not exempted under section 8 of the Madras General Sales Tax Act, 1959. There is no provision either in the Madras Prohibition Act, 1937, or elsewhere which exempts sales of foreign liquor from the tax payable under the general charging section 3 of the Madras General Sales Tax Act, 1959, and it is therefore taxable at the rate of 2 per cent. under that section. Section 21-A of the Madras Prohibition Act, 1937, which imposes a rate of tax of 50 per cent. deals with the specific cases of sales of a dealer to permit holders or licence holders and it would not be proper to call the rate applicable to these special classes “the rate applicable to the sale or purchase of such goods inside the appropriate State” within the meaning of section 8(2)(b) of the Central Sales Tax Act, 1956. The rate referred to in section 8(2)(b) is the general rate prescribed by section 3 and not the special rate imposed by section 21-A of the Madras Prohibition Act, 1937. Therefore the tax leviable on inter-State sales of foreign liquor not supported by C Forms can only be 2 per cent. up to 1st October, 1958, and 7 per cent. from 1st October, 1958, when section 8(2) was amended by Act XXXI of 1958.—*PHIPSON AND COMPANY (PRIVATE) LTD. v. GOVERNMENT OF MADRAS* [1964] 15 S.T.C. 740 (Mad.).

—Foreign liquor—Levy of sales tax under Sales Tax Act and Prohibition Act—Legality—Whether offends Article 301 or 304 of Constitution—Sales tax collected or gallonage fee paid under Prohibition Act—Whether can be included in turnover under Sales Tax Act.—Where foreign liquor imported from abroad or from other States does not suffer an excise duty under any law and such a liquor is not manufactured in the State, by levying a tax on foreign liquor under the Madras General Sales Tax Act, 1959, neither Article 301 nor Article 304 is infringed. Section 6 of the Madras General Sales Tax Act, 1959, authorises an additional levy of sales tax under that Act notwithstanding a similar levy under any other law and therefore the levy of sales tax on foreign

liquor under section 21-A of the Madras Prohibition Act, 1937, and also under section 3 of the Madras General Sales Tax Act, 1959, is not illegal. But the amount representing “sales tax” collected as such under section 21-A of the Madras Prohibition Act, 1937, cannot be included in the taxable turnover under the Madras General Sales Tax Act, 1959. Gallonage fee paid under clause (XI) of rule 22 of the Madras Liquor (Licence and Permit) Rules, 1960, forms part of the price of goods sold and can be validly included in the assessable turnover of a dealer under the Madras General Sales Tax Act, 1959.—*SPENCER & CO., MADRAS 2 v. THE JOINT COMMERCIAL TAX OFFICER, DIVISION NO. III, MADRAS-2* [1969] 24 S.T.C. 161 (Mad.).

Manufacturer of rectified and methylated spirit—Excise duty and vend fee paid to Government and realised from customers at the time of sale—Whether part of turnover and liable to sales tax.—The assessee carrying on the business of the manufacture of rectified and methylated spirit paid to the Government under the U.P. Excise Act, excise duty and vend fee on the amount of spirit manufactured by him and kept in the warehouse. On the occasion of the sale of the spirit to his customers, the assessee added to the price a proportionate amount of the excise duty and vend fee paid by him, and realised the amount from the customers. The assessee contended that the excise duty and vend fee were paid by him on behalf of the customers and could not legally be included in his turnover for payment of sales tax: *Held*, that the amount which the assessee paid as excise duty and vend fee in the assessment year was liable to be included in his turnover for that year.—*STANDARD REFINERY CO. v. SALES TAX COMMISSIONER, U.P.* [1963] 14 S.T.C. 529 (All.).

Tax on purchases by manufacturers—Whether excise duty.—See pages 292 and 303 to 306 *supra*.

—Tax on the purchase of goods for use in manufacture—Whether excise duty.—The purchase tax levied under the Punjab General Sale Tax Act, 1948, was not an excise duty since the purpose for which the goods were purchased was only relevant for fixing the taxable event, but the tax was on the purchase of goods. That taxable event was fixed before the goods were actually manufactured.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* (and other cases) [1967] 20 S.T.C. 430 (S.C.).

Tobacco—“A” Licensee in tobacco—Excise duty collected by warehouse licensee—Whether can be

deducted from taxable turnover of "A" licensee.—Rule 7(1)(i) of the Travancore-Cochin General Sales Tax Rules, 1950, provided that in determining the net turnover "the excise duty, if any, paid by the dealer to.....the Central Government in respect of the goods sold by him" should be deducted from his gross turnover: *Held*, that the amount representing the excise duty paid by the petitioner, who was an "A" licensee in tobacco, to the warehouse licensee along with the price of the tobacco purchased by him was not excise duty paid by him to the Central Government and could not therefore be deducted from the petitioner's taxable turnover. The liability to pay excise duty was not of the petitioner but of the person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse.—*MOHAMMED KUNJU ABDUL KADIR v. THE SALES TAX OFFICER, CHANGANASSERY, AND OTHERS* [1957] 8 S.T.C. 689 (Ker.).

—*Excise duty paid by customers direct to Government but not included in cash memos issued by dealer*—*Whether part of sale price for tobacco.*—The assessee carried on a business in tobacco. The goods sold by him were non-duty paid goods and were in the bonded warehouse. The customers, who purchased the goods from the assessee, paid the excise duty direct into the treasury and after obtaining the challan showed it to the Collector of Excise who gave the necessary clearance permit. The assessee issued cash memos to the customers in which he only entered the actual cash price received by him. The question was whether the amount representing the excise duty paid by the customers could be included in the taxable turnover of the assessee: *Held*, that the legal liability to pay the excise duty was upon the assessee under the rules framed under the Central Excises and Salt Act, 1944. If the customers agreed contractually to pay the excise duty which was payable by the assessee under the Rules, then the payment of the excise duty was manifestly a part of the valuable consideration for the purchase of the goods. The excise duty paid by the customers therefore constituted as a matter of law a part of the sale price for the tobacco within the meaning of section 2(h) of the Act and was rightly included in the assessee's turnover.—*DAYABHAI GOKULBHAI PATEL v. THE STATE OF BIHAR* [1959] 10 S.T.C. 483 (Pat.).

—*Sale of tobacco by one dealer to another dealer*—*Excise duty paid by buyer to Government*—*Whether part of purchase price.*—If a buyer purchases tobacco from a dealer for a specified amount when excise duty on such tobacco is chargeable under the Central Excises and Salt Act, 1944, and there

is no stipulation in the contract of sale about the payment of such duty, if the tobacco is sold non-duty paid and the duty is subsequently paid by the buyer under section 7 of the Central Excise Rules, the duty so paid by him is not part of the price and cannot be included in the purchase turnover of the buyer. Such duty is part of the price only if it forms part of the consideration for the sale. *Dayabhai Gokulbhai Patel v. The State of Bihar* [1959] (10 S.T.C. 483) and *Mohammed Kunju Abdul Kadir v. The Sales Tax Officer, Changanassery, and Others* [1957] (8 S.T.C. 689) distinguished.—*P. V. BEEDIES (PRIVATE) LTD. v. THE STATE OF MYSORE AND OTHERS* [1963] 14 S.T.C. 139 (Mys.).

—*Excise duty paid by assessee before tobacco is taken out of bonded warehouse*—*Whether deductible.*—Where the assessee had licensed warehouse in which the tobacco they purchased was bonded till it was removed for manufacturing chewing tobacco, but before it was taken out of bond excise duty was paid by them to the Government: *Held*, that the excise duty paid by the assessee should be excluded from their taxable turnover under rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.—*BELL MARK TOBACCO COMPANY, PUDUKOTTAH, AND OTHERS v. THE GOVERNMENT OF MADRAS* [1961] 12 S.T.C. 126 (Mad.). See the two decisions of the Supreme Court given below:—

—*Excise duty paid on raw tobacco used for manufacturing chewing tobacco*—*Whether deductible from turnover of chewing tobacco*—"In respect of", meaning of.—The expression "in respect of the goods" in rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, means only "on the goods": only excise duty paid on the goods sold by the dealer is deductible from the gross turnover under rule 5(1)(i). *Held*, accordingly, that the respondent-firm, which purchased raw tobacco and converted it by a manufacturing process into chewing tobacco and sold it in small paper packets, was not entitled to deduction of excise duty paid by it on the raw tobacco from the gross turnover of sales of chewing tobacco under rule 5(1)(i). *Bell Mark Tobacco Co. v. Government of Madras* [1961] (12 S.T.C. 126) overruled on this point. Decision of the Madras High Court partly reversed.—*THE STATE OF MADRAS v. SWASTHIK TOBACCO FACTORY* [1966] 17 S.T.C. 316 (S.C.).

—*Sale of chewing tobacco prepared from raw tobacco*—*Whether chewing tobacco manufactured product or same commodity as raw tobacco*—*Excise duty paid in respect of raw tobacco*—*Whether*

allowable deduction—“In respect of”—Meaning of—Tax in section 5—Whether includes excise duty.

The respondents, who were dealers in tobacco and tobacco products, were assessed to sales tax on the turnover from the sales of “chewing tobacco”. The process of preparation of “chewing tobacco” was as follows: The respondents purchased raw tobacco and after sprinkling jaggery or plain water on the bundles of tobacco, allowed the tobacco to ferment for some days. Heat was thereby generated and the tobacco was well processed. Stalks of tobacco were broken and removed, and sand and dust were also removed. After paying excise duty the bundles of tobacco were brought to the premises of the factory. Jaggery juice was sprinkled on the tobacco and it was then cut into thin strips by shearing machines. This tobacco was allowed to dry for some days and flavouring essences were then sprinkled on it. It was then packed in special wrappers and these packets were known as “chewing tobacco” packets. A large number of workmen was employed to carry out these several processes: *Held*, (1) that the various processes to which the raw tobacco was subjected amounted to a manufacturing process, and therefore the chewing tobacco sold by the respondents was not the same commodity as raw tobacco but was a manufactured product from raw tobacco purchased by the respondents; (2) that the expression “in respect of the goods” in rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, meant “on the goods”, and therefore only the excise duty paid on the goods sold by a dealer was deductible; (3) that the excise duty paid in respect of raw tobacco was not liable to be excluded in the computation of the taxable turnover of the respondents, since the excise duty paid in respect of raw tobacco used in the manufacture of chewing tobacco was not duty paid in respect of the goods sold by the respondents within the meaning of rule 5(1)(i) of the rules; (4) that the respondents were also not entitled to get rebate under section 5 of the Madras General Sales Tax Act, 1939, in respect of the excise duty paid by them on raw tobacco, inasmuch as tax in the proviso to that section did not include “excise duty”. *State of Madras v. Swasthik Tobacco Factory* [1966] (17 S.T.C. 316) followed.—*THE STATE OF MADRAS v. BELL MARK TOBACCO Co.* [1967] 19 S.T.C. 129 (S.C.).

—*Sale of chewing tobacco prepared from raw tobacco—Excise duty paid in respect of raw tobacco—Whether allowable deduction.*—A dealer in tobacco and tobacco products is not entitled to deduction of the excise duty paid on raw tobacco in the computation of the taxable turnover of the sales of chewing tobacco. *The State of Madras v.*

Swasthik Tobacco Factory [1966] (17 S.T.C. 316) and *The State of Madras v. Bell Mark Tobacco Company* [1967] (19 S.T.C. 129) followed.—*THE STATE OF MADRAS v. M. N. A. ABDUL RAHMAN* [1967] (19 S.T.C. 134 (S.C.)).

EXEMPTIONS

(See also DEDUCTIONS)

General principles

Burden of proof—The burden of proving a claim for exemption from tax is on the assessee and that onus can be discharged only by showing that the assessee had in fact been granted a licence.—*C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER* [1954] 5 S.T.C. 121 (Trav.-Co.).

—The burden is always on the dealer, on whom the liability for payment of tax always rests, to prove that a particular transaction is exempt by reason of payment through an agent or otherwise.—*THE STATE OF MYSORE v. A. C. HANUMANTHAPPA* [1955] 6 S.T.C. 34 (Mys.).

—Since the object of the Hyderabad General Sales Tax Act, 1950, is to levy sales tax on all goods generally other than those specified in the exempted list, an assessee who claims exemption from sales tax must show that he comes within the exempted list or he has been exempted by the Government under section 7 of the Act.—*NIZAM SUGAR FACTORY LTD. v. COMMISSIONER OF SALES TAX, HYDERABAD* [1957] 8 S.T.C. 61 (Hyd.).

—The burden of proving that a transaction is exempt from sales tax is on the person claiming the exemption.—*R. D. FERNANDES, In re* [1957] 8 S.T.C. 365 (Mad.).

—If an assessee claims an exemption it is for him to prove that he is entitled to it.—*N. K. C. SYED MOHAMMED RAVOOTHER v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUKOILUR* [1958] 9 S.T.C. 1 (Mad.).

—It is for a person who claims exemption to prove the circumstances which warrant the exemption.—*P. ANWAR BADSHA SAHIB AND Co., VIZIANAGARAM v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 546 (A.P.).

—Neither the Constitution of India nor the Andhra Pradesh General Sales Tax Act, 1957, makes any exception in favour of persons, the exception is only in favour of transactions of a particular nature. Where transactions are admitted or proved to have been carried on within the territory of the State, it is open to the department to ask those who carry on such transactions that they should satisfy the department that these transactions are exempt from tax. Or if it is their case that they carried on no transactions at

all within the territory, then too, they must prove it. It is incumbent on the assessee to place before the taxing authorities material which would enable them to distinguish between transactions which are immune from tax and which are not. Where no assistance is rendered to them to determine the necessary questions of fact, the authorities have no option but to resort to those provisions of the Act which enable them to take action where assessee abstain altogether from co-operation.—**VELAGA NARAYANA RAO AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, KAKINADA-II** [1960] 11 S.T.C. 145 (A.P.).

—Burden of proof.—See also **KHUDRATHULLA & Co. v. STATE OF ANDHRA PRADESH** [1960] 11 S.T.C. 595 (A.P.).

—Single point tax—Goods taxable only on first sale—Claim for exemption of certain sales as second sales—Presumption—Burden of proof—Whether separate accounts should be maintained.—**THE STATE OF MADRAS v. V. P. S. A. NARAYANA NADAR & Co.** [1968] 21 S.T.C. 25 (S.C.).

Claim for exemption—Reason behind rule whether can be availed of.—In the case of an exemption, if the words of the rule are insufficient to cover the case, the reason behind the rule cannot be availed of to obtain the relief.—**TUNGABHADRA INDUSTRIES LTD. v. COMMERCIAL TAX OFFICER** [1960] 11 S.T.C. 827 (S.C.).

Distinction between exemptions from tax and non-liability to tax—There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax on such sales and they should be excluded from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.—**A. V. FERNANDEZ v. THE STATE OF KERALA** [1957] 8 S.T.C. 561 (S.C.).

—See also **KUMARASAMY PATHAR v. THE STATE OF MADRAS** [1969] 23 S.T.C. 447 (Mad.) and **COMMISSIONER OF SALES TAX v. GODREJ SOAP PVT. LTD.** [1969] 23 S.T.C. 489 (Guj.).

Exemption not a substantive right—Exemption from liability to tax is not a substantive right and immunity from taxation by a bar of limitation can be removed by retrospective legislation by a competent Legislature.—**KANHAYYALAL SHIVSAHAY SHARMA v. DEPUTY COMMISSIONER OF SALES TAX, M.P., AND OTHERS** [1958] 9 S.T.C. 503 (M.P.) (F.B.).

Exemption is only a concession—There is no fundamental right to carry on a business in a country without paying taxes which the country's law impose. The exemption under the Act is only a concession and if it is withdrawn, (cancellation of registration certificate issued to a dealer registered under the Act) the holder of the registration certificate is merely consigned to his original position of having to purchase certain classes of goods which will be chargeable to sales tax like the sales of the same goods to all other persons. If the Act, in so far as it imposes a tax on sales, does not constitute an unreasonable restriction on the freedom to carry on trade or business, a concession once offered under the provisions of that very Act and then withdrawn for reasons stated in the Act itself cannot be condemned as constituting any restriction on the freedom of trade or business.—**INDIAN IRON AND STEEL Co., LTD. v. COMMERCIAL TAX OFFICER AND OTHERS** [1957] 8 S.T.C. 517 (Cal.).

Exemption is also intended for persons—Sales tax is a tax on persons in respect of their transactions of sales of certain goods and the exemption from taxation is also intended for persons in respect of certain specified goods.—**KISANLAL RADHAKISAN v. STATE** [1952] 3 S.T.C. 336.

Interpretation of provisions—The general rule of construction is that exemptions from tax granted by a statute should be given full scope and amplitude and should not be whittled down by importing limitations not inserted by the Legislature. If under the provisions of a taxing statute an assessee claims an exemption, it is for that person to show that he has been exempted. Therefore provisions providing for exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before exemption can be recognised, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption.—**DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. SRI PENTAPATY LAKSHMANA SWAMY** [1956] 7 S.T.C. 560 (Andh.) (F.B.).

—See also **KAPILDEORAM BAIJNATH PROSAD v. J. K. DAS AND OTHERS** [1954] 5 S.T.C. 365 (Assam) and **M. A. GANAPATHY IYER v. HYDERABAD STATE** [1954] 5 S.T.C. 334 (Hyd.).

—While construing any provisions of exemptions strictly, one should not lose sight of the actual language employed in the rule and also the purpose for which it is made.—**MANDAVA BALARAMA KRISHNAMURTHY v. THE STATE OF ANDHRA PRADESH** [1961] 12 S.T.C. 83 (A.P.).

—An exemption clause in a taxing statute must be construed strictly, but it should not be so construed as to make the exemption practically illusory.—**J. SRIRANGAM BROTHERS AND OTHERS v. SALES TAX OFFICER, GANJAM CIRCLE, BERHAMPUR** [1959] 10 S.T.C. 257 (Ori.).

—See also page 415 *supra*.

—An exemption in a taxing measure cannot be carried further than the exemption itself indicates. If the exemption is in respect of kerosene that exemption cannot be stretched to cover the container.—**GOVINDRAM RAMPRASAD OF INDORE v. ASSESSING AUTHORITY (SALES TAX) AND ANOTHER** [1957] 8 S.T.C. 407 (M.P.).

—See also under **SALT** *infra*.

—An exemption from tax given by a statutory provision must be given full scope and amplitude and cannot be whittled down by importing limitations not inserted by the Legislature. But it is also well settled that the exemption claimed must fall clearly within the language granting exemption.—**COMMISSIONER OF SALES TAX, MADHYA PRADESH v. SHRI HARICHAND CHANDULAL, BHOMA, SEONI** [1965] 16 S.T.C. 13 (M.P.).

—An exemption granted by section 5(2) of the Bengal Finance (Sales Tax) Act, 1941, being the creation of the statute, must be construed strictly.—**UNION OF INDIA v. COMMERCIAL TAX OFFICER** [1956] 7 S.T.C. 113 (S.C.).

—Provisions providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognised, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption.—**CRAWFORD'S STATUTORY CONSTRUCTION**, paragraph 258, page 506.

—“Shri Vohra has then contended that in the case of a taxing statute, the Court must place a strict construction in favour of the assessee and that unless the language of item No. 7 in the Second Schedule can be held without any doubt to be restricted only to vegetable plants, the assessee must get the benefit of the ambiguity in this language. In my opinion, the language used in the relevant item is quite clear and plain and is not capable of any other meaning than the one adopted by the Sales Tax Department. I should, however, like to point out that there is no equity

in the case of taxing statutes and they have to be reasonably interpreted on the plain meaning of the language used by the Legislature. A strict or liberal construction is simply a means by which the scope of a statute is extended or restricted in order to convey the legislative meaning. Now, the long range objectives of all tax measures, it may be recalled, is the accomplishment of good social order and too stilted interpretation of tax laws with the sole object of giving benefit to the taxpayer may result in the loss of revenue at the expense of the State and may operate to the disadvantage of others contributing to its support. Of course, the charging section must be quite clear and unambiguous because tax can only be imposed by authority of law and such law must accordingly be reasonably clear in its mandate. At the same time, when an assessee chooses to bring his case within an exemption from the imposition, it is for him to bring his case quite clearly within the language of the exemption. Broadly speaking, grants of tax exemption also attract a construction which is inspired by the rule that the burdens of taxation should be distributed equally and fairly among the members of society. From whichever point of view the matter is considered, it appears that the word ‘vegetable’ is intended to qualify the word ‘plants’ as well.”—**JUGINDER NURSERY v. COMMISSIONER OF SALES TAX, DELHI STATE, DELHI** [1966] 18 S.T.C. 343 (Punj.).

Articles prepared from exempted articles—Whether exempt.—Articles prepared from exempted articles need not necessarily be exempt from sales tax. **JAGANMOHAN REDDY, J.**, of the Hyderabad High Court observed as follows:—“If the contention of the assessee’s Advocate that whatever article is manufactured from an exempted article is also exempt is to be held valid, then the whole purpose and meaning of the sales tax would have been nullified in that it is difficult to envisage cases of items of exemption from which other articles are not made and which it is the intention of the Legislature to tax. However, from the aforesaid we are of the view that ready-made garments made of cloth costing less than Rs. 3 per yard do not come within the exemption specified in item 17 of Schedule I of the Hyderabad General Sales Tax Act.”—**SHARFAJI RAO v. COMMISSIONER OF SALES TAX** [1953] 4 S.T.C. 6 at p. 9 (Hyd.). See also cases under heading **BREAD** and **CLOTH** *infra*.

Intention in granting exemption—Validity of Act making clear intention.—In exercise of the powers under section 6 of the Orissa Sales Tax Act, 1947, the Government of Orissa issued a notification exempting from sales tax gold

ornaments "when the manufacturer selling them charges separately for the value of gold and the cost of manufacture." The petitioner carrying on business in gold and silver ornaments supplied gold to artisans, got the ornaments prepared by the artisans under his supervision and sold the ornaments in his shop showing the value of gold and cost of manufacture separately. The High Court held that the petitioner was a manufacturer of gold ornaments and was therefore entitled to the benefit of the exemption under the notification. Subsequently, the Orissa Legislature passed the Orissa Sales Tax Validation Act, 1961, section 2 of which provided as follows:—"Notwithstanding anything contained in any judgment, decree or order of any court, the word 'manufacturer' occurring.....in the Notification.....shall mean and shall always be deemed to have meant a person who by his own labour works up materials into suitable forms and a person who owns or runs a manufactory for the purpose of business with respect to the articles manufactured therein." The petitioner challenged the validity of this section on the following grounds: (i) Since the exemption was granted by the State Government by virtue of the powers conferred on it by section 6 of the Orissa Sales Tax Act, 1947, it was not open to the Legislature to take away that exemption retrospectively; (ii) The section contravened the provisions of Articles 14 and 19(1)(g) of the Constitution: *Held*, (i) that although the State Government was given the power either to grant or withdraw the exemption, that could not affect the Legislature's competence to make any provision in that behalf either prospectively or retrospectively and therefore section 2 was not invalid; (ii) that the persons who got the benefit of the exemption notification as a result of the provisions of section 2 could not be said to belong to the same class as the petitioner and therefore that section did not contravene Article 14; (iii) that, in the circumstances of the case, it could not be said that by making the provisions of section 2 retrospective the Legislature had imposed a restriction on the petitioner's fundamental right under Article 19(1)(g) which was not reasonable and was not in the interest of the general public.—*EPARI CHINNA KRISHNA MOORTHY AND ANOTHER v. THE STATE OF ORISSA AND OTHERS* [1964] 15 S.T.C. 461 (S.C.).

Nature of exemption when licence is granted—
Licence to deal in cotton yarn—"Subject to such restrictions and conditions", meaning of.—The exemption under a licence granted to a dealer in cotton under section 5 of the Madras General Sales

Tax Act, 1939, is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act or in the rules or in the licence itself. A licensee is therefore exempt from assessment as long as he conforms to the conditions of the licence and he is not entitled to exemption if the conditions upon which the licence is given are not fulfilled. The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning is "conditional upon". The appellants, dealers in cotton yarn, obtained a licence under section 5 which exempted them from assessment to sales tax under section 3 on the sale of cotton yarn and on handloom cloth "subject to such restrictions and conditions as may be prescribed including conditions as to licence and licence fees." The Commercial Tax Authorities made a surprise inspection of the premises of the appellants and discovered that they were maintaining two separate sets of account on the basis of one of which they submitted their returns to the Department. As the other set of account books showed black-market activities, the appellants were prosecuted and sentenced for an offence under the Cotton Yarn Control Order. The appellants were also assessed to sales tax. The appellants contended that as long as they held the licence it was immaterial if they were guilty of any infraction of the law and that they were not liable to any assessment of sales tax under the provisions of the Act and the only penalty they incurred was to have their licence cancelled and/or to the penalty which under the criminal law they had already suffered: *Held*, that as the appellants had been found to have contravened the provisions of the Act as well as the rules, it could not be said that they had observed the conditions upon which the exemption under the licence was available and therefore they were not exempt from assessment under the Act. *The Province of Madras v. K.R.C.S. Balakrishna Chetty and Sons and Co.* [1955] (6 S.T.C. 415) affirmed.—*K.R.C.S. BALAKRISHNA CHETTY & Co. v. THE STATE OF MADRAS* [1961] 12 S.T.C. 114 (S.C.).

Notifications—Issue of notification in the middle of year granting exemption.—The appellant selling manufactured tobacco was registered as a dealer under section 7 of the East Punjab General Sales Tax Act, 1948, and was paying sales tax on manufactured tobacco. On 1st April, 1954, the Punjab Tobacco Vend Fees Act, 1954, came into force. On 27th September, 1954, the Government issued a notification exempting manufactured tobacco from the levy of sales tax by including item 51 in the Schedule of exemptions. As the

notification did not mention the date from which the exemption operated, the question arose whether the notification had effect only from the 27th September, 1954, or from the beginning of the financial year: *Held*, by the Court (KAPUR, J., dissenting) that as the tax under the Act was yearly and was to be paid on the taxable turnover of a dealer, the exemption, whenever it came in, in the year for which the tax was payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption. In the present case, the notification did not fix the date from which the exemption was to operate, because the Act omitted to make such provision enabling the State to do so, and the exemption must, therefore, operate for the whole year, during which it was granted. KAPUR, J.—The scheme of the Act and the Rules made thereunder did not show that the exemption became operative for the whole year whenever during the year the notification of exemption was issued even though it might be on the last day of the financial year. *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.* ([1961] 2 S.C.R. 189; 12 S.T.C. 182) referred to.—MATHRA PARSHAD AND SONS v. THE STATE OF PUNJAB AND OTHERS [1962] 13 S.T.C. 180 (S.C.).—See also COMMISSIONER OF SALES TAX v. COOPER AND Co. [1968] 22 S.T.C. 111 (Bom.).

Power to grant exemption by issuing notification—If the State Government has the power to grant an exemption by issuing a notification, it has also the power to withdraw the exemption by rescinding the notification by which it was granted. The power conferred on the State Government by section 6 of the General Sales Tax Act, 1125, does not enable it to issue a notification either granting or withdrawing an exemption with retrospective effect. But it cannot be said that by withdrawing the benefit of the exemption from the date of the notification, that notification is being given retrospective effect merely because a licence taken in fulfilment of the conditions stipulated by the notification granting the exemption is for a period beyond the date of the withdrawal. In exercise of the power conferred by section 6 of the General Sales Tax Act, 1125, the State Government issued a notification dated 15th June, 1950, exempting dealers other than the first and last dealers from the payment of tax in respect of the sale of copra on condition that they took out a licence under rule 21 of the Travancore-Cochin General Sales Tax Rules, 1950, on payment of the fees prescribed under rule 22 thereof. This exemption

was withdrawn by the State Government by issuing another notification amending the earlier notification and this amendment came into force on 18th November, 1952. The question was, whether the plaintiff who was an intermediate dealer and whose licence enured up to 31st March, 1953, was entitled to the exemption for the period 18th November, 1952, till 31st March, 1953: *Held*, that the duration of the licence had nothing whatever to do with the period for which the exemption was available. As it was the notification that granted the exemption and not the licence, the period of the exemption was the period for which the notification remained in force. Therefore the plaintiff was not entitled to the exemption for the period 18th November, 1952, to 31st March, 1953. *A. Subramania Iyer v. The Travancore-Cochin State and Another* [1956] (7 S.T.C. 826; 1956 K.L.T. 719) referred to.—STATE OF KERALA v. M. VELAYUDHAN [1963] 14 S.T.C. 382 (Ker.).

Power of Government to grant exemption—Jaggery—Withdrawal of exemption granted to jaggery and gur by amending Schedule and simultaneous issue of notification granting exemption to palm jaggery—Validity—Whether discriminatory.—The exemption granted to jaggery and gur under the Madras General Sales Tax Act, 1959, was withdrawn from 1st January, 1968, when item 5 of the Third Schedule to the Act was amended by the Government by issuing a notification under section 59(1) of the Act and this became law as Act 2 of 1968 when the Legislature approved the notification. On the same day, in exercise of their powers under section 17(1), the Government issued another notification granting exemption in respect of the tax payable on all sales of palm jaggery. The grant of such an executive exemption was challenged in the High Court by certain dealers in cane jaggery by a petition under Article 226 of the Constitution: *Held*, (1) that the policy of taxation is flexible and a provision empowering the executive to exempt particular goods from a duty is valid; (2) objectively viewing the provisions attacked, it could not be said that the Legislature or the executive arbitrarily acted to the prejudice of the traders in cane jaggery; (3) the imposition of tax on palm jaggery and cane jaggery under Act 2 of 1968 and the subsequent grant of exemption from such tax to palm jaggery alone under section 17 did not cumulatively or otherwise impose any unreasonable restriction on trade in cane jaggery; (4) the exemption granted to sales of palm jaggery was competent and even if it were to be viewed as restrictive of trade in relation to cane jaggery, such a restriction was

reasonable, rational and necessary in the public interest; (5) cane jaggery and palm jaggery being two different commodities, the State Government was not unjustified in differentiating them for tax purposes, and therefore no question of discrimination arose.—*K. SUBRAMANIA PILLAI AND OTHERS v. STATE OF MADRAS* [1969] 23 S.T.C. 359 (Mad.) affirmed by the Supreme Court. See 24 S.T.C. Sh. Notes I.

Power to withdraw exemption retrospectively—See pages 319-320 *supra*.

Rules contemplated by entry conferring exemption coming into force subsequently—The benefit of entry 28 in the Fifth Schedule to the Mysore Sales Tax Act, 1957, which came into force on 1st January, 1959, would be available from that date even though the rules contemplated by the explanation to that entry came into force only on 7th May, 1959. The Commissioner could be moved and his recognition obtained even if no definite procedure in that regard had been prescribed. In the absence of the rules, the limits placed on the ambit of that entry were ineffective and all transactions complying with the requirements of that entry were entitled to the exemption. The facility to pass on the tax liability to the purchasers is not a necessary condition precedent for the validity of a sales tax law. *Konduri Buchirajalingam v. The State of Hyderabad* [1958] (9 S.T.C. 397) followed. *Bhima Balu Madigar v. Basangouda Mamgouda Patil* [1954] (56 Bom. L.R. 520) referred to.—*THE STATE OF MYSORE v. H. IBRAHIM SAHEB & SONS* [1964] 15 S.T.C. 273 (Mys.).

Scope of power of exemption granted under section 7, Orissa Sales Tax Act, 1947.—The power of exemption under section 7 of the Orissa Sales Tax Act, 1947, can be used only where, but for the order of exemption, the dealer would be liable to pay sales tax. On the other hand, if, under the law as it stood on a particular day, a dealer was not liable to pay sales tax, Government could not issue an exemption order under section 7 in respect of that dealer.—*WILLIAM JACKS & CO. LTD. v. THE STATE OF ORISSA* [1965] 16 S.T.C. 693 (Orissa).

Exempted turnover included in return and assessed to tax—Duty of officers.—The duty of the assessing officers is not merely to impose tax that is lawfully exigible but also to give to the assessee the benefit of any reduction or exemption that may become due to them upon facts actually found to be true by the assessing authorities, whether or not the assessee, out of ignorance or by mistake, make a claim thereto. When the mistake is obvious and the matter is taken up on

appeal, it is the duty of the appellate authorities to correct the mistake.—*GIRIDHARLAL PARASMAL v. THE STATE OF MYSORE* [1967] 20 S.T.C. 64 (Mys.).

Scope of exemption under section 8(2), Central Sales Tax Act—Some “dealers” are exempt from taxation. Some goods are exempt from taxation and some transactions are exempt from taxation. Clause (2) of section 8 of the Central Sales Tax Act, 1956, ignores the exemption given to a dealer under the sales tax law of the appropriate State. For example, under the Mysore Sales Tax Act, 1957, all dealers whose turnover is less than Rs. 7,500 are exempt from taxation. That exemption is taken away by section 8(2) of the Act. The reason for this removal of exemption is obvious. The Central Sales Tax Act imposes tax only on inter-State sales. Inter-State dealings of a “dealer” would be ordinarily a fraction of his total dealings. Therefore, the reason for fixing the minimum turnover for being liable to be taxed under the State tax law, i.e., being a petty trader, disappears.—*YADALAM LAKSHMINARASIMHAIAH SETTY & SONS v. STATE OF MYSORE* [1962] 13 S.T.C. 583 at p. 587 (Mys.) affirmed by the Supreme Court in [1965] 16 S.T.C. 231.

Agricultural Implements

Cane crushers and boiling pans—Whether agricultural implements.—See *BHARAT ENGINEERING AND FOUNDRY WORKS v. THE U. P. GOVERNMENT* [1963] 14 S.T.C. 262 (All.) page 18 *supra*.

Centrifugal water pumps—Whether agricultural implements.—*DELTA ENGINEERING Co. PRIVATE LTD. v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 515 (All.) page 18 *supra*.

“Crow-bar”—Whether agricultural implement.—“Crow-bar” is an “agricultural implement” and is therefore exempt from sales tax under Schedule III of the Mysore Sales Tax Act, 1948.—*THE STATE OF MYSORE v. SANTOMAL KISHNOMAL* [1962] 13 S.T.C. 313 (Mys.).

Persian wheels—Whether agricultural implements.—“Persian wheels and their parts sold for bona fide agricultural purposes” are to be treated as “agricultural implements” within the meaning of that term in item 35 of the Schedule of Exemptions attached to the Pepsu General Sales Tax Ordinance, 2006. The fact that a specific exemption was granted in the case of persian wheels and their parts (item 35A) by the Government does not take away from the Financial Commissioner the power of putting the correct interpretation on the term “agricultural implements” for the period prior to the date on which the said exemption was granted.—*BURMA NAND IRON WORKS, In re* [1956] 7 S.T.C. 282.

Scope of Item 2 of Schedule III, Assam Sales Tax Act, 1947—An examination of Schedule III would show that exemptions relate mainly to commodities which may be regarded as essential for the life of the community. Most of them are necessities of life. As regards item No. 2 relating to agricultural implements the condition of exemption was that the price per piece should not exceed Rs. 15. Now the sale of all agricultural implements satisfying the value or the price test would be exempt from sales tax. The number of implements sold at any given time is wholly immaterial. One thousand different implements may be sold. But if the price per piece does not exceed Rs. 15 the entire transaction is exempt from taxation under the Act. It will be clear that so far as this item is concerned the price test is the only criterion for determining whether the transaction is taxable or not. The quantity sold at a given time is immaterial.—*RAM NARAYAN NANDALAL v. THE STATE OF ASSAM* [1953] 4 S.T.C. 195 at p. 198 (Assam).

Agricultural implements—"Scrap iron" has not been defined in the Hyderabad General Sales Tax Act, 1950. If it is to be deemed to be the same stuff as raw iron mentioned in item 29 of Schedule I of the Act, agricultural implements manufactured from that stuff have to be exempted.—*RAJAB ALI PIRANI v. STATE OF ANDHRA PRADESH* [1967] 19 S.T.C. 312 (A.P.).

Phawadas—Exemption of agricultural implements specified by State Government by notification—Notification mentioning "hoes (all kinds)" —*Phawadas*—Whether entitled to exemption—*M P. General Sales Tax Act, 1958, Sec. 10, Sch. I, item 1.*—*COMMISSIONER OF SALES TAX, M.P. v. ANIL IRON WORKS, INDORE* [1968] 21 S.T.C. 496 (M.P.). (See page 19 *supra*).

Chaff-cutter—Whether mower.—See *COMMISSIONER OF SALES TAX, MADHYA PRADESH v. AGRICULTURAL IMPLEMENTS DEALERS' SYNDICATE* [1966] 18 S.T.C. 524 (M.P.) page 19 *supra*.

Tractor—Whether agricultural implement.—See *AGRICULTURAL TRACTOR*, page 27 *supra*.

Agricultural Produce

Agricultural and horticultural produce (Areca-nut, Groundnut, Rubber, Sugarcane and Tea)—Exemption.—See page 19 *et seq.*

Agriculturist selling produce from his lands—Whether dealer liable to tax or entitled to exemption.—See *DEALER*, page 456 *supra*.

Books

Books, meaning of—Diaries—Whether books and exempt.—The word "books" in section 4 of the

U.P. Sales Tax Act, 1948, is used not in the wider sense but in the restricted or popular sense. Therefore the diaries (containing mostly of blank pages, a sloka from Bhagwat Gita at the top of each page and few pages of general information in the beginning) sold by the assessee are not "books". *PATHAK, J.*—Where the meaning of a particular word is doubtful or obscure, being capable of wide import, the intention should be ascertained by looking at adjoining words. The words take their colour from each other and the more general is restricted to a sense analogous to the less general. *In re Tomline's Will Trusts: Pretymann v. Pretymann* ([1931] 1 Ch. D. 521) distinguished; *Foster v. Diphwys Casson Slate Company and Another* ([1887] 18 Q.B.D. 428) referred to.—*INDUSTRIAL AND COMMERCIAL SERVICE, ALLAHABAD v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW* [1963] 14 S.T.C. 299 (All.).

Examination answer-books—Whether "exercise books" and exempt under entry 14, Schedule I, Madhya Pradesh General Sales Tax Act, 1958.—Examination answer-books are not "exercise books" and as such they are not exempt from sales tax under entry 14 of Schedule I to the Madhya Pradesh General Sales Tax Act, 1958.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. LOK CHETNA PRAKASHAN, JABALPUR* [1968] 21 S.T.C. 355 (M.P.).

Bullock-carts

Bullock-carts and spare parts thereof—Sale of old tyres for bullock-carts—Old tyres—Whether spare parts—Whether exempt as falling under entry 6, Schedule A, or chargeable to tax under entry 22, Schedule E, Bombay Sales Tax Act (51 of 1959).—The assessee, who were registered dealers and carrying on business in old tyres and axles and other parts for bullock-carts, purchased old and worn out tyres of the buses of the State Transport Organization and Ahmedabad Municipal Transport Service from persons who bid at the auction of such tyres and sold them as old tyres for bullock-carts. The question was whether these sales were exempt from sales tax as falling under entry 6 of Schedule A to the Bombay Sales Tax Act, 1959, or were covered by entry 22 of Schedule E and were accordingly liable to tax: *Held*, (1) that the correct test in cases like the present one would be to find out whether the sales would fall within entry 6 of Schedule A and if they could not fall in that entry, then they would fall within the residuary entry 22 of Schedule E; (2) that the old tyres sold by the assessee fell within the description of spare parts of bullock-carts and would be covered by entry 6 of Schedule A. Principles laid down in *Bishambar Dayal Shri Niwas v. Commissioner of*

Sales Tax, Uttar Pradesh [1963] (14 S.T.C. 184), *Commissioner of Sales Tax v. Jaswant Singh Charan Singh* [1967] (19 S.T.C. 469; 1967 M.P.L.J. 590; A.I.R. 1967 S.C. 1454) and *Vithal Chhagan & Sons v. State of Gujarat* [1966] (17 S.T.C. 96) applied.—*STATE OF GUJARAT v. B. G. BATWARA & Co.* [1968] 22 S.T.C. 202 (Guj.).

Bread, Rice and Wheat

Bread, meaning of—The Hyderabad General Sales Tax Act exempted from sales tax “bread” and “all cereals and pulses including all forms of rice (except when sold in sealed containers)”. *Held*, by the Hyderabad High Court that the intention of the Legislature in using the term “bread” is to exempt all kinds of bread which are consumed by the citizens of India, whether prepared in different ways or called by different names. The term “bread” includes all forms or kinds of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the article. *Held further*, that when the Legislature used a term relating to an article of food, it must be construed in the sense in which it is understood in this country and not elsewhere.—*KAYANI AND Co. v. COMMISSIONER OF SALES TAX* [1953] 4 S.T.C. 387 (Hyd.).

Biscuits—Whether bread.—Bread and biscuits are different commodities and therefore item 3 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941, does not apply to the sale of biscuits. Biscuits however are a kind of cooked food and are therefore exempt except when sold in sealed containers.—*DIAMOND BISCUIT Co. v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 110.

—See also *COMMISSIONER OF SALES TAX, M.P., INDORE v. SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA* [1968] 21 S.T.C. 309 (M.P.) page 137 *supra*.

Bushl or rice-bran is included in the word “cereal” in item 1 of Schedule III of the Assam Act and is therefore exempt from assessment.—*MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM* [1953] 4 S.T.C. 129 (Assam).

Chira and murti—*Whether cereals and exempt from taxation.*—Item 1 of Schedule 3 of the Assam Sales Tax Act, 1947, exempts from taxation “all cereals and pulses including all forms of rice”. *Held*, that as long as a thing continues to be cereal and retains its form as such, although it may have undergone some simple processes of boiling or parching, it cannot be held that it will not be covered by the exemption provided by item 1 of Schedule 3. *Chira* and *muri* do not cease

to be cereals merely because rice or paddy has undergone the process of being flattened or fried in assuming the form of *chira* and *muri*. To all intents and purposes *chira* and *muri* are cereals and have not lost their character of cereals by any process of transformation so as to make them being called by any other name and they are therefore exempt from sales tax. SARJOO PROSAD, C.J.—All exemptions from taxation must be strictly construed and must not be extended beyond the express requirements of the language used. The taxation laws are not in the nature of penal laws; they are substantially remedial in their character and are intended to prevent fraud, suppress public wrong and promote the public good. They should, therefore, be construed in such a way as to accomplish those objects. If cereal or rice has been so mixed up with other ingredients or so transformed as not to be reasonably called by that name, the position would be different. RAM LABHAYA, J.—It is a settled rule of construction that the intention of the Legislature is to be gathered from the language used in the enactment which comes up to be interpreted. If the words leave no doubt as to their meaning and import, it is the obvious duty of the Court to give effect to them. Where the language is plain and admits of one meaning only, it has to be given effect to even if it leads to apparent hardship. Even boiled rice may be described as a cereal though cooked rice of every description may not be described as cereal. *Pulao* is one instance of cooked rice which it would be difficult to describe as a cereal. If there is any ambiguity or doubt in the expression of the legislative intent in a fiscal enactment the Courts have to give the benefit thereof to the subject and relieve him from the burden of taxation.—*KAPILDEORAM BAIJNATH PROSAD v. J. K. DAS AND OTHERS* [1954] 5 S.T.C. 365 (Assam).

“Bread”, “cereals,” meanings of—*Nimkis and singaras—Whether bread or cereals and exempt from sales tax—Sweets prepared from milk, flour and sugar—Whether exempt—Nimkis and singaras* do not come within the ambit of the word “bread” in item 4 of Schedule III of the Assam Sales Tax Act, 1947. They are also not “cereals” and will not fall under item 1 of Schedule III. They are therefore not entitled to exemption from sales tax. Although milk, flour and sugar are exempt from sales tax under the Assam Sales Tax Act, sweets prepared from milk, flour and sugar are not exempt from sales tax. As the Assam Sales Tax Act is in English and it uses English words the recognised meaning of the term “bread”, which it carries in English speaking world, may alone be attributed to it

and no extended meaning can be given to it. Therefore although *chapathis* and *lanure-ki-roti* may be regarded as covered by the term "bread" it cannot be stated as a general proposition that the term "bread" includes all forms or kinds of bread prepared even by frying or roasting meal or flour, with or without the addition of yeast. In order to claim exemption under item 1 of Schedule III, it is necessary that the articles should remain cereals unmixed and unadulterated with other commercial commodities and ought to be capable of being described as cereals. *Kayani and Co. v. Commissioner of Sales Tax* [1953] 4 S.T.C. 387 dissented from. *Bhakti Bhusan v. J. C. Goswami* (Civil Rule No. 98 of 1953; unreported) distinguished.—**DELHI MISTANNA BHANDAR v. STATE OF ASSAM** [1957] 8 S.T.C. 258 (Assam).

Idlies and dosas—Whether included in rice.—The items mentioned in Schedule I of the Hyderabad General Sales Tax Act, 1950, are exhaustive and not merely indicative of the articles which are exempt from the levy of sales tax. Therefore the argument that when rice has been exempted from the levy of sales tax any form of rice such as *idlies* and *dosas* which only amount to a change in the form of rice should also be deemed to be exempt from the levy of sales tax is not correct. If the statute does not provide that a particular commodity would be exempt from taxation, exemption cannot be claimed by way of analogy or *a priori* reasoning. Omission cannot be supplied by implication or by analogy.—**M. A. GANAPATHY IYER AND ANOTHER v. HYDERABAD STATE** [1954] 5 S.T.C. 334 (Hyd.).

Khudi (Broken rice)—*Khudi* is nothing but broken rice and comes within item 1 of Schedule III of the Assam Sales Tax Act, 1947, which excludes from assessment all cereals and pulses including all forms of rice except when sold in sealed containers.—**MOHANLAL JOGANI RICE AND ATTA MILLS v. THE STATE OF ASSAM** [1953] 4 S.T.C. 129 (Assam).

Maida—Whether included in "wheat flour".—*Maida* is included in the term "wheat flour" and is therefore exempt from sales tax under item 1 in the Schedule to the East Punjab General Sales Tax Act, 1948. **KAPUR, J.**, in the course of his judgment observed as follows:—"It cannot be said that *maida* is not included in the word 'wheat flour'. Flour according to the dictionary meaning is 'the finer portion of meal (wheat or other) which is separated by bolting; and hence the fine soft powder of any substance.' *Maida*, therefore, is, according to the dictionary meaning, included in the word 'wheat flour'. I do not

know of any definition of the word 'wheat flour' which has ever excluded *maida*. I would, therefore, hold that *maida* is excluded under item 1 of the Schedule under section 6."—**HARBANS LAL v. THE PUNJAB STATE** [1953] 4 S.T.C. 391 (Punj.).

Maida, whether wheat and exempt from taxation—Under section 5(vi) of the General Sales Tax Act, 1125, (Kerala) the Legislature intended to grant the exemption only to the items mentioned in section 2(dd) in the original form, *viz.*, as grain, and the subsidiary products that would be obtained from those items are not eligible for exemption. "*Maida*" therefore is not included in the expression "wheat" and is not entitled to the exemption under section 5(vi).—**S. RAMANATHA SHENOY & CO. v. SALES TAX OFFICER, TELLICHERRY, AND ANOTHER** [1963] 14 S.T.C. 231 (Ker.).

Murghi dana—Whether wheat or wheat flour—Whether exempt from sales tax.—The commodity sold in the market as *murghi dana* or chicken feed is neither wheat nor wheat flour and is therefore not exempt from sales tax under the East Punjab General Sales Tax Act, 1948.—**THE PUNJAB STATE AND ANOTHER v. PURAN CHAND LAL CHAND AND OTHERS** [1956] 7 S.T.C. 17 (Punj.).

Rice—Whether includes all preparations from rice.—"Rice" in item 1 of the exempted articles in Schedule I of the Hyderabad General Sales Tax Act dealing with cereals ["all cereals and pulses including all forms of rice (except when sold in sealed containers)"] should not be interpreted as meaning cooked rice or *biriyani* or *pulao*. The word "form" connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. Rice in all forms would mean all kinds or variety of rice or species of rice, such as broken rice, *kichidi* rice, *pichodi* rice or rice flour etc.—**KAYANI & CO. v. COMMISSIONER OF SALES TAX** [1953] 4 S.T.C. 387 (Hyd.).

Supply of rice packed in gunny bags—Gunny bags, whether exempt.—See **PACKING MATERIALS** *infra*.

Sale of foodgrains in gunny bags—Claim for exemption.—See **PACKING MATERIALS** *infra*.

Supply of atta, an exempted commodity packed in gunny bags—Value of gunny bags—Whether exempt.—See **PACKING MATERIALS** *infra*.

Cattle-feeds

Cattle-feeds—"Super-mindif"—"Super-mindif" falls within entry 6 of Schedule A to the Bombay Sales Tax Act, 1953, and is not subject to the

payment of tax under that Act.—**BOOTS PURE DRUG CO. (I.) PRIVATE LTD. v. THE STATE OF BOMBAY** [1960] 11 S.T.C. (T.D.) 53.

Cloth

Cheap cloth—Item No. 6 of Schedule III, Assam Sales Tax Act, deals with cheap cloth. The exemption in the case of sale of this cloth can be claimed where the cloth is of that variety and price as may be notified by the Provincial Government. Even here it is the variety of the cloth and the price which would afford the criterion for determining whether exemption can be claimed or not. The quantity sold at a given time is not relevant for determining whether exemption can be claimed or not.—**RAM NARAYAN NANDALAL v. THE STATE OF ASSAM** [1953] 4 S.T.C. 195 at p. 198 (Assam).

Cloth cut from bigger piece costing more than Rs. 10—*Whether entitled to exemption*.—Notification No. 11689-F, dated 8th August, 1951, does not expressly say that handloom woven cotton cloth cut from a bigger piece whose price exceeds Rs. 10 will be outside the scope of the exemption. A cut piece whose price does not exceed Rs. 10 also would come within the scope of the exemption, even if the value of the “than” from which the piece is cut is above Rs. 10.—**COMMISSIONER OF SALES TAX, ORISSA v. KALURAM NARASINGH DAS** [1961] 12 S.T.C. 391 (Ori.).

Garments made out of exempted cloth—Item 17 of Schedule I of the Hyderabad General Sales Tax Act, 1950, exempted “cloth of such descriptions as may from time to time be specified by notification in the Gazette, costing less per yard than Rs. 3 or such other sum as may be so specified.” The Government by notification specified all cotton cloth of Indian manufacture costing per yard less than Rs. 3 as being exempt from sales tax: *Held*, that ready-made garments made of cloth costing less than Rs. 3 per yard did not come within the exemption.—**SHARFAJI RAO v. COMMISSIONER OF SALES TAX** [1953] 4 S.T.C. 6 (Hyd.).

Garments prepared from handloom cloth—*Whether cloth manufactured on handlooms*.—The first point to be decided is whether the articles sold by the applicant can be treated as “cloth manufactured on handlooms” within the meaning of the notification mentioned above. We are of opinion that they cannot be so treated. The word “cloth” is to be distinguished from “clothes” or garments. Cloth is the fabric or material from which “clothes” are made as wearing apparel or as other articles of personal use. What is exempted under the notification is “cloth” and not “clothes”. What the applicant does is to take

handloom cloth and either cut it into specific sizes or to have them manufactured into specific sizes, so that the pieces can be used as *saris*, bed covers, *lihafs* (quilt covers) etc., and then to print them so that they can be readily used for the purpose for which they are meant. It is quite obvious that the articles in which the applicant deals are “clothes” or garments and not “cloth” within the meaning of the notification.—**FIRM JASWANT RAI JAI NARAIN v. SALES TAX OFFICER AND OTHERS** [1955] 6 S.T.C. 386 (All.).

Handloom cloth—*Whether includes handloom cotton lungies, roomals and sarees*.—The word “cloth” in item 22 of Schedule I of the Hyderabad General Sales Tax Act, 1950, takes in every fabric used for any purpose including the use as wearing apparel whether it is sold by unit or by yards. The immunity from tax under item 22 of Schedule I is linked with the quality of the cloth and is unaffected by the mode of sale. Whether they are sold wholesale or in retail or even on unit basis, so long as it is handloom cloth and costs less than Rs. 3 per yard, it is within the letter and spirit of the provision.—**RAI SAHEB CHEDRA DURVASULU v. SALES TAX OFFICER, SEVENTH CIRCLE, SECUNDERABAD, AND OTHERS** [1961] 12 S.T.C. 158 (A.P.).

Handloom cloth—*Durries*—*Whether entitled to exemption*.—Item 3 of the Notification No. F. 21(7)/SR/55 dated 14th April, 1955, when it exempted handloom cloth, did so in its narrower meaning and “durry” was not intended to be included in this exemption.—**INDER SINGH v. SALES TAX OFFICER, CITY CIRCLE, JODHPUR** [1961] 12 S.T.C. 557 (Raj.).

Hand loom-woven cloth when subjected to needle work—Handloom-woven cloth which, after it comes out of the loom, is subjected to needle work performed by hand or machine and thereby has its value increased, cannot be regarded as handloom-woven cloth within the meaning of item No. 16 of the Schedule of the Bengal Finance (Sales Tax) Act, 1941. The provisions of the section and item 16 apply only to handloom-woven cloth which is sold in the same state in which it is when finished and removed from the loom.—**ISWARDAS KAPOOR & SONS v. MEMBER, BOARD OF REVENUE, BENGAL** [1946] 1 S.T.C. 153 (Cal.).

Handloom cloth—*Nawar tape woven on handlooms*—*Whether cloth woven on handlooms*.—Section 5(iii) of the Madras General Sales Tax Act, 1939, provided that “the sale of any cloth woven on handlooms wholly or partly with mill yarn shall be exempt from taxation under section 3, sub-section (1)”: *Held*, although nawar tape (material

woven in narrow bands and used as mat for cots) was woven on handlooms with mill yarn, "cloth" in the section could not take in nawar tape and therefore nawar tape was not entitled to the exemption: *Held further*, that the notification which came into force after the relevant assessment year and which exempted sales of handloom cotton nawar tape by persons dealing exclusively in such handloom cotton nawar tape was not retrospective in operation.—*KOSURI SUBBA RAJU v. THE STATE OF ANDHRA* [1956] 7 S.T.C. 479 (Andh.).

Hand-woven and handspun cotton cloth from mill-made yarn—The assessee, who were registered dealers under the Assam Sales Tax Act, 1947, claimed exemption from sales tax under item 16 of Schedule III on their turnover from cloth sold in pieces of 20 to 30 yards. The quality of the entire cloth was such that the price of a unit of six yards was less than Rs. 10. The Sales Tax Authorities did not allow the claim on the ground that the exemption under item 16 could only be allowed if pieces of cloth sold did not exceed six yards in length and the price of each piece did not exceed Rs. 10. On a reference under section 32(3): *Held*, that the assessee was entitled to the exemption claimed. *RAM LABHAYA, J.*—Where the price per piece of six yards does not exceed Rs. 10 and the cloth is of the variety covered by item No. 16 of Schedule III, the transaction is exempt from taxation irrespective of the actual length sold at any one time. The criterion laid down is the price per yard calculated on the basis of Rs. 10 for six yards and the conditions laid down in the item have no reference to the actual lengths sold or to the units in which they are sold. *DEKA, J.*—In order to be exempted from assessment, one of the conditions in item No. 16 is that the cloth sold should be cut or made into pieces not exceeding six yards in length and the other condition is its price level as mentioned in the Schedule. The words "piece of six yards" are not used to indicate the price level only. In view of the fact that the clause in the right hand column of item 16 presented some difficulty in the matter of its interpretation and the sales tax on the variety of cloth described in that item had been abolished, the clause might be interpreted to the advantage of the assessee.—*RAM NARAYAN NANDALAL v. THE STATE OF ASSAM* [1953] 4 S.T.C. 195 (Assam).

Handloom cloth—Borders woven on handloom out of pure silk, art silk and jari thread—Whether handloom cloth.—Borders containing more than 60 per cent. of pure silk and woven on handloom out of silk, art silk and jari threads are not handloom cloth within the meaning of entry 29 in

Schedule A to the Bombay Sales Tax Act, 1959. The word "cloth" in entry 29 of Schedule A must be interpreted according to its secondary or popular sense—the sense in which they are commonly understood in ordinary parlance—and not in its primary or technical sense. In ordinary parlance borders cannot be regarded as cloth. The words "of all varieties" in the entry do not control or affect the true connotation of what is handloom cloth within the meaning of that entry. The Legislature used the words "of all varieties" for the purpose of bringing within the ambit of the exemption all varieties of handloom cloth provided they satisfied the basic requirement that they were handloom cloth.—*THE STATE OF GUJARAT v. UMEDRAM LALLUBHAI* [1965] 16 S.T.C. 1059 (Guj.).

Hessian—Whether "cloth"—Whether exempted under entry 1, Schedule I, Bombay Sales Tax Laws (Special Exemptions) Act, 1957.—The word "cloth" as used in entry 1 of Schedule I to the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, would cover hessian, i.e., cloth manufactured from fibres of hemp or jute. Therefore the sale of hessian is not taxable under the Bombay Sales Tax Act, 1953. *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286) referred to.—*COMMISSIONER OF SALES TAX, GUJARAT v. SUMATILAL POPATLAL & Co.* [1964] 15 S.T.C. 498 (Guj.).

Hessian—Whether exempt.—"Hessian" did not come within the classes of goods mentioned in Schedule I to the Bombay Sales Tax Laws (Special Exemptions) Act, 1957, and it was therefore not exempt from payment of sales tax under the Bombay Sales Tax Act, 1953. Goods mentioned in Schedule I were subject to the payment of the additional duty of excise and hessian was not subjected to that payment.—*A. K. SHAH & Co. v. THE STATE OF BOMBAY* [1960] 11 S.T.C. (T.D.) 29.

Hosiery goods—Whether garments and exempt from sales tax.—The word "garment" means any article of clothing irrespective of the fact whether it is visible to another or not. It is the use of covering human body which gives content to the word. By a notification dated 31st January, 1958, the Rajasthan Government exempted from the levy of sales tax under the Rajasthan Sales Tax Act, 1954, "the sale of any garment whether prepared within or imported from outside Rajasthan the value of which does not exceed Rs. 4 in single piece": *Held*, that the hosiery goods (cotton vests, underwears, mufflers and "topas") manufactured by the petitioner and the cost of which did not exceed Rs. 4 each were

"garments" exempt from sales tax by virtue of the notification. On the question whether an assessee should be refused relief in proceedings under Article 226 of the Constitution of India on account of the availability of alternative remedies, no hard and fast rule could be laid down.—**PAREEK HOSIERY PRODUCTS v. DEPUTY COMMISSIONER OF SALES TAX (APPEALS), JAIPUR, AND OTHERS** [1962] 13 S.T.C. 722 (Raj.).

Notification exempting garments excluding hosiery products—Whether infringes Article 14, Constitution of India—Hosiery products—Meaning of—Whether include "banians" and "chaddies".—The petitioners were selling "banians" and "chaddies" and were registered as dealers under the Rajasthan Sales Tax Act, 1954. In exercise of the powers conferred by section 4(2) of the Act the Government issued Notification No. F. 5(3) E. & T./58 dated 31st January, 1958, exempting from sales tax the sale of any garments whether prepared within or imported from outside Rajasthan the value of which did not exceed Rs. 4 in single piece. In *Pareek Hosiery Products v. Deputy Commissioner of Sales Tax (Appeals), Jaipur, and Others* [1962] (13 S.T.C. 722) the High Court held that "banians" and "chaddies" were garments within the meaning of the notification and were exempt from the payment of sales tax where the value of a single piece was less than Rs. 4. Subsequently the Government issued Notification No. F. 5(99) E. & T./60 dated 26th March, 1962, which ran as follows:—"In exercise of the powers conferred by sub-section (2) of section 4 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), and in supersession of this Department Notification No. F. 5(3) E. & T./58 dated the 31st January, 1958, the State Government being of the opinion that it is necessary in public interest to do so, hereby exempts the sale of garments whether prepared within or imported from outside Rajasthan the value of which does not exceed Rs. 4 in single piece excluding hosiery products and hats of all kinds, from payment of any tax under the said Act: Provided that a dealer obtains an exemption certificate on payment of an annual fee of Rs. 10." The Commercial Taxes Officer held that "banians" and "chaddies" were hosiery products within the meaning of the notification and included their sale value in the petitioners' taxable turnover. The petitioners thereupon filed a petition under Article 226 of the Constitution and contended (1) that the notification dated 26th March, 1962, was violative of Article 14 of the Constitution; (2) that the term hosiery did not include "banians" and "chaddies"; and (3) that the notification was in excess of the powers

of the State Government under section 4(2): *Held*, (1) that the notification dated 26th March, 1962, was in accord with the language of section 4(2) of the Act and it was not lacking in a proper classification so as to be hit by Article 14 of the Constitution; (2) that "banians" and "chaddies" were included in the term "hosiery products" and were, therefore, excluded from the operation of the notification dated 26th March, 1962; (3) that the notification accorded with the language of section 4(2) and it could not be said to be in excess of the powers granted by that section to the State Government.—**JAIPUR HOSIERY MILLS PRIVATE LTD. AND OTHERS v. STATE OF RAJASTHAN AND OTHERS** [1967] 19 S.T.C. 416 (Raj.).

Notification exempting sale of cloth manufactured in U.P. with a view to export such cloth—Meaning of "such cloth"—Export of cloth after dyeing and printing—Right to exemption.—The Uttar Pradesh Government issued a notification which provided that with effect from 1st December, 1949, the provisions of section 3 of the U.P. Sales Tax Act, 1948 (relating to the levy of sales tax) did not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after 1st December, 1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn was actually exported and proof of such actual export was furnished. The petitioners, a textile mill in U.P., sold cotton cloth manufactured by them to their constituents who thereafter dyed and printed such cloth with hand-made apparatus and exported them overseas as hand-printed cloth. The question was whether the petitioners were entitled to exemption under the notification: *Held*, (1) that it is not necessary for the exemption that there should be an initial manufacture with a view to make a sale for export but that the exemption will be satisfied even if already existing manufactured cloth is sold with a view to export. The essential pre-requisite is that the sale must be made with a view to export as the emphasis is on the word "sale" and its time and purpose and not the manufacture of the cloth at a particular time for a particular purpose; (2) that by using the word "such" in the notification what the Legislature has laid down is not that the identical thing should be exported in bulk and quantity or that any change in appearance would be crucial to alter it. The words "such cloth or yarn" would mean the cloth or yarn manufactured in U.P. and sold and they have nothing to do with the transformation by printing and designs on the cloth; (3) that

although the colour of the cloth had changed by printing and processing, the cloth exported was the same as the cloth sold by the petitioners and they were therefore entitled to the exemption under the notification.—**KAILASH NATH AND ANOTHER v. THE STATE OF U.P. AND OTHERS** [1957] 8 S.T.C. 358 (S.C.).

—See also *Cottage and Home Industries* page 552 *infra*.

P. V. C. rexine cloth—Whether leather-cloth—Whether taxable or exempt under Notification No. 2765-2264-VST dated 12th December, 1960.—P.V.C. rexine cloth, which is manufactured with cloth as base and given coating or coatings of Polyvinyl Chloride in processing factories by special spreading machines, is leather-cloth and is not exempt from payment of sales tax under item 6 of Schedule I of the Madhya Pradesh General Sales Tax Act, 1958. It is however exempt from payment of sales tax under Notification No. 2765-2264-VST dated 12th December, 1960, and if it had not been so exempted, then the sale of it would have been taxable under item 38 of Schedule II to the Act. It is not taxable under item I of Part VI of Schedule II to the Act. For the application of the rule of *ejusdem generis*, the enumerated things before the general words must constitute a category or a genus; it is requisite that there must be a distinct genus, which must comprise more than one species.—**S. R. CALCUTTAWALA, SIYAGUNJ, INDORE v. COMMISSIONER OF SALES TAX, MADHYA PRADESH** [1967] 19 S.T.C. 230 (M.P.).

Sales of handloom cloth falling under section 8(2), Central Act—Whether entitled to exemption granted to handloom cloth by notification under section 9(1), Andhra Pradesh Act—Central Sales Tax Act (74 of 1956), Sec. 8(2)—Andhra Pradesh General Sales Tax Act (6 of 1957), Sec. 9(1).—**SRI SURYA TRADING FIRM AND OTHERS v. THE STATE OF ANDHRA PRADESH** [1963] 14 S.T.C. 720 (A.P.).

Ready-made garments—Whether textiles and entitled to exemption.—By a Government Order, the Government of Andhra Pradesh exempted from the levy of sales tax all varieties of textiles manufactured by handloom, powerloom or otherwise and this exemption was subsequently incorporated in the Andhra Pradesh General Sales Tax Act, 1957, by adding a fifth item to Schedule V, which specified exempted goods. The petitioner claimed that he was entitled to the exemption for the sale of ready-made clothes made out of textiles: *Held*, that the words “all varieties of textiles” did not include ready-made

clothes made out of textiles and the petitioner was not entitled to the exemption. When a cloth is made into a shirt or a pyjama it would no longer be proper to describe it as mere cloth. It has assumed a new character. Such finished garments are clothes and no longer cloth.—**M. A. RAHIM v. DEPUTY COMMERCIAL TAX OFFICER, LORD BAZAR, CIRCLE I, HYDERABAD** [1960] 11 S.T.C. 355 (A.P.).

Textile goods—Goods not subject to levy of excise duty under clause 3, Additional Duties of Excise (Levy and Distribution) Bill, 1957—Whether entitled to exemption.—A notification granting exemption from sales tax issued by the Government of Andhra Pradesh under section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957, was as follows:—“In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957..... the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, with effect on and from the 14th December, 1957, the sale or purchase of any of the goods appended hereto: Provided that in the case of any class of such goods in respect of which additional duties of excise are leviable by the Central Government under clause 3 of the Additional Duties of Excise (Levy and Distribution) Bill, 1957, read with section 4 of the Provisional Collection of Taxes Act, 1931,.....the exemption shall be subject to the following conditions, namely:—(1) The dealer shall prove to the satisfaction of the assessing authority that additional duties of excise have been so levied and collected on such goods by the Central Government, in default of which the dealer shall be liable to pay the tax under the said Act in respect of such goods. (2) Any dealer who is so liable to pay the tax may, at his option, pay, in lieu thereof a lump sum by way of composition determined in the manner specified in condition (3).....” The first clause of the appendix to the notification was as follows:—“All varieties of textiles, *viz.*, cotton, woollen or silken including rayon, art silk or nylon, whether manufactured by handloom, power-loom or otherwise.” The appellants doing business in the purchase and sale of textile goods claimed exemption from sales tax in respect of the goods in stock with them. The goods were, however, not subject to excise duty or the additional excise duty under clause 3(1) of the Additional Duties of Excise (Levy and Distribution) Bill, 1957. The respondents contended that if the exemption provision contained in the first paragraph of the notification was to operate, the goods must have been such that it was liable to the tax under clause 3(1) of the Bill and that as

this condition was not satisfied in the case of the appellants, the exemption provision did not apply to them: *Held*, (1) that the operative words of the notification were to be found in the first paragraph granting the exemption and the appellants were within that provision. As the proviso could not apply to cases where an additional duty of excise was not leviable under clause 3 of the Bill, the operation of the exemption was unaffected by the proviso and the appellants were therefore entitled to relief from sales tax granted by the notification; (2) that the object behind the framers of the notification may be to avoid double taxation, but the operation of an enactment or of a notification has to be judged not by the object which the Legislature or the notifying authority, as the case may be, may have had in mind but by the words which it has employed to effectuate the legislative intent.—*INNAMURI GOPALAM AND MADDALA NAGENDRUDU AND OTHERS v. THE STATE OF ANDHRA PRADESH AND ANOTHER* [1963] 14 S.T.C. 742 (S.C.).

“Braided cords”—*Whether textiles and extitled to exemption under entry 4, Schedule III, Madras General Sales Tax Act (1 of 1959).*—“Textiles” as used in entry 4 of Schedule III of the Madras General Sales Tax Act, 1959, should be interpreted broadly in the sense of products obtained by weaving and so interpreted “braided cords” would also be entitled to the exemption provided under that entry. *Subbaier v. Regional Provident Fund Commissioner* [1963] (A.I.R. 1963 Mad. 112) referred to.—*THE STATE OF MADRAS v. T. T. GOPALIER AND ANOTHER* [1968] 21 S.T.C. 451 (Mad.).

Cloth manufactured in powerlooms—*Whether mill-made textiles.*—Cloth manufactured in powerlooms which are housed in a factory are “mill-made textile” within the meaning of section 5A(1)(i) of the General Sales Tax Act, 1125. *Sri Dhandapani Powerloom Factory, Erode v. Commercial Tax Officer, Coimbatore, and Another* [1961] (12 S.T.C. 304) dissented from.—*LEKSHMI POWERLOOM INDUSTRIAL CO-OPERATIVE SOCIETY LTD. v. STATE OF KERALA* [1965] 16 S.T.C. 864 (Ker.).

Coal

Cinder—*Whether coal and exempt.*—Coal was exempt from sales tax by Notification No. ST 911/X dated 31st March, 1956, issued under section 4 of the U.P. Sales Tax Act, 1948: *Held*, that “cinder” is not “coal” and therefore “cinder” was not exempt from the sales tax under the notification.—*MAHABIR SINGH RAM*

BABU v. ASSISTANT SALES TAX OFFICER, FIROZABAD, AND ANOTHER [1962] 13 S.T.C. 248 (All.).

Cooked food

Biscuits—*Whether cooked food and exempt from sales tax.*—See *DIAMOND BISCUIT CO. v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 110 and *COMMISSIONER OF SALES TAX, M.P., INDORE v. SHRI BALLABHDAS ISHWARDAS, BOMBAY BAZAR, KHANDWA* [1968] 21 S.T.C. 309 (M.P.) page 137 *supra*.

Cooked food—**“Meal”, meanings of**—*Eatables served in restaurant.*—The applicant was running a restaurant wherein, besides tea and coffee, certain eatables usually taken along with a cup of tea or coffee were also served. The applicant claimed exemption from sales tax in respect of the sale of food stuffs by virtue of the provisions of sec. 7 of the Bombay Sales Tax Act which provided that no tax shall be payable under the Act on the sale of goods specified in the 1st column of the Schedule, subject to the condition and exceptions, if any, set out in the corresponding entry in the second column thereof. Item No. 10 in the Schedule provided that *cooked food* eaten at hotel, restaurant, refreshment room, eating room or other place where *cooked food* was served was exempt. The corresponding entry in the second column made an exception to the exemption where the cost of “single meal” exceeded annas eight. The Sales Tax Authorities computed the taxable turnover as including the price of meals costing more than eight annas and assessed him accordingly. On revision: *Held*, (1) having regard to the ordinary dictionary meaning of the expression “cooked food”, it directly covers the articles sold in the applicant’s shop and are therefore covered by the exemption allowed in item No. 10 of the Schedule annexed to the Act; (2) that the articles supplied by the applicant did not constitute a “meal” inasmuch as they are not the principal articles of food taken at meal time but are more like refreshments which are taken in between the usual meals to supplement them, and are not therefore covered by the exception to the exemption set out in the second column against item No. 10 in the Schedule annexed to the Act.—*V. B. ASHTAPUTRE v. THE COMMISSIONER OF SALES TAX, BOMBAY PROVINCE* (1 S.T.D. 11). This decision was affirmed by the Bombay High Court.

Railway stall selling tea and light refreshments—*Whether entitled to exemption*—“Cooked food”—*Whether includes tea, coffee, biscuits and cakes.*—The applicants had a stall for selling tea and light refreshments at a railway station and they served refreshments to the public at the

counter of their stall, as also on the platform of the station and to the passengers in the trains. In respect of the two periods of assessment 1st October, 1946, to 31st March, 1947, and 1st April, 1947, to 31st March, 1948, the questions that arose were: (1) whether the applicants were entitled to exemption from sales tax in respect of sales of food and drinks at the railway station by virtue of item No. 10 in the Schedule annexed to the original Act, and (2) whether the imposition of penalty under section 12(3A) for having paid less tax for the periods within the prescribed time was legal: *Held*, (1) that the applicants were entitled to exemption in full in respect of refreshments (solid) served by them to passengers at their kitchen or on the platform or in the train; (2) that section 12(3A), added to the Act by Bombay Act 1 of 1949, was not retrospective in operation and therefore the imposition of penalty was not legal. "Food" does not include tea, coffee etc. but only means such food as can be masticated and swallowed, e.g., biscuits, cakes etc. The sale of refreshments (solid) prepared after applying heat must be treated as wholly exempt in cases arising before the amendment of 1949. The words "or other place where cooked food is served" in item No. 10 of the Schedule are capacious enough to include the platform or the train and "food" supplied there must be treated as served at the usual place. (The Tribunal observed that only wilful withholding of the payment of the tax that should be visited with any penalty and that discretion should be left to the Sales Tax Authorities to decide the question whether in the circumstances of a particular case it should at all be imposed).—*MOTILAL LAXMIDAS AND CO. v. THE STATE OF BOMBAY* [1951] 2 S.T.C. 153.

Scope of items 49 and 50, Schedule B, East Punjab General Sales Tax Act (46 of 1948)—In order to avail of the benefit of the exemption granted by items 49 and 50 of Schedule B to the East Punjab General Sales Tax Act, 1948, the assessee must prove before the assessing authorities the following facts: (1) the food preparations sold by them were those which were ordinarily prepared by Tandoorwalas, Lohwalas and Dhabas; (2) their own position while making sale of those preparations was that of persons running Tandoors, Lohs and Dhabas exclusively; (3) the sweets prepared and sold by them were ordinarily those which were prepared by Halwais; and (4) their own position while making sale of the said sweets was that of the Halwais. They should also seek the ordinary remedies provided by the East Punjab General Sales Tax Act. Before doing so, they could not

invoke the extraordinary remedies provided by Article 226 of the Constitution.—*GREEN HOTEL AND RESTAURANT v. ASSESSING AUTHORITY, PATIALA, AND OTHERS* [1961] 12 S.T.C. 603 (Pun.).

Gbhana—Whether cooked food and exempt from tax.—See *SANTOSH KUMAR GHOSH v. COMMERCIAL TAX OFFICER AND OTHERS* [1965] 16 S.T.C. 931 (Cal.) (See page 422 *supra*).

Cooked food (other than cooked food sold in sealed containers) including sweetmeats and other confectionery—"Sealed containers", meaning of.—Clause (2) of the Notification No. S.T. 118/X-929-48 dated June 7, 1948, issued by the Governor in exercise of the powers conferred by section 4 of the U.P. Sales Tax Act, 1948, exempted from sales tax "dealers in cooked food (other than cooked food sold in sealed containers) including sweetmeats and other confectionery" on certain conditions. The assessee-firm, which carried on the business of manufacture and sale of confectionery such as chocolates, lollipops, lemondrops etc., sold the confectionery in packings of tins and cardboard which were closed by the use of cellophane paper to protect the contents from being affected by the atmosphere. The assessee contended that the sales of confectionery were exempt from sales tax under the notification on payment of the prescribed fee but the Sales Tax Officer rejected the claim on the ground that the confectionery was sold in "sealed containers". On a reference, the High Court held that the turnover representing the sale of confectionery by the assessee was not the turnover of confectionery sold in sealed containers. On appeal to the Supreme Court: *Held*, that the packets sold by the assessee fell within the expression "sealed containers" within the meaning of the notification. "Sealed container" means a container which is "so closed that access (to the contents) is impossible without breaking the fastening." Decision of the Allahabad High Court in *K. P. Bhargava v. Commissioner of Sales Tax, U.P.*, *Lucknow* [1963] (14 S.T.C. 386) reversed.—*COMMISSIONER OF SALES TAX, U.P. v. G. G. INDUSTRIES, AGRA* [1968] 21 S.T.C. 63 (S.C.).

Cooked food and non-alcoholic drinks—Scope of entry 14, Schedule A, Bombay Sales Tax Act, 1959—"Outside" the hotel premises—Meaning of—Cooked food served at customers' premises—Whether exempt.—The exemption granted under entry 14 of Schedule A of the Bombay Sales Tax Act, 1959, is available not only where cooked food and non-alcoholic drinks are served by an eating establishment (other than that falling within the

excepted category) for consumption in or immediately outside the eating establishment but also where cooked food and non-alcoholic drinks are served by the eating establishment at any other place outside the eating establishment for consumption or are served at the eating establishment for consumption at any other place outside the eating establishment.—*GOVINDSHRAM HOTEL v. THE STATE OF GUJARAT* [1966] 17 S.T.C. 100 (Guj.).

Cottage and Home Industries

Cottage and home industries—Order of Commissioner refusing exemption—Whether appealable.—The appellant applied to the Sales Tax Commissioner under the old unamended rule 25 of the Sales Tax Rules claiming exemption from payment of tax on the ground that he dealt exclusively in products of cottage and home industries. The Commissioner rejected the application and the appellant appealed to the Board of Revenue. It was contended for the State that the appeal was not maintainable inasmuch as the order passed by the Commissioner must be deemed to have been passed by him as an agent of the State Government under section 7 of the Act and the Board of Revenue, being a body created by the State Government to exercise some of its powers and discharge some of its functions, could not sit in judgment over the decisions of the State Government: *Held*, that the State Government could not delegate the powers under section 7 to a subordinate authority like the Sales Tax Commissioner, that the prescribed authority who should decide whether exemption should be granted was the Sales Tax Commissioner and not the State Government and that an appeal lay to the Board of Revenue against the order of the Commissioner. Sales tax is a tax on persons in respect of their transactions of sales of certain goods and the exemption from taxation is also intended for persons in respect of certain specified goods. Consequently the entry in column (3) against item 21 of Schedule II, which particularises the class of persons to be exempted, cannot be considered as open to challenge.—*KISANLAL RADHAKISAN v. THE STATE* [1952] 3 S.T.C. 336.

Power-loom cloth and handloom cloth subjected to silk and jari embroidery—Cloth produced on power-looms cannot be regarded as a product of cottage industry. Handloom cloth subjected to silk and *jari* embroidery can still qualify for exemption provided the work of embroidery itself is a cottage industry. A dealer who buys small quantities of *jari* or silk required solely for use on handloom cloth produced as a cottage

industry will not be debarred from claiming exemption under rule 25. *Ishwardas Kapoor and Sons v. Member, Board of Revenue* [1950] (1 S.T.C. 153) distinguished.—*KISANLAL RADHAKISAN v. THE STATE* [1952] 3 S.T.C. 336.

Domestic use

"Domestic use"—Meaning of—Supply of charcoal and firewood to Government hospitals for preparing food and boiling water—Whether sale for domestic use—Whether exempt from levy of sales tax.—*J. VAMANA PRABHU v. THE STATE OF MYSORE* [1967] 20 S.T.C. 38 (Mys.) (page 511 *supra*).

Essences and Cordials

Essences and cordials made out of fruit juice—Where the defendant sold by wholesale several bottles of liquid labelled lemon cordial and raspberry balm cordial manufactured by it and contended that the goods were wholly exempt from sales tax by virtue of the provisions of the Sales Tax (Exemptions and Classifications) Act, 1935-47 (Australia) section 5 and the First Schedule thereto, item 36(3), which read as follows:—"Essences, concentrates and cordials, consisting wholly or principally of juices of Australian fruits, for the making of non-alcoholic beverages; non-alcoholic beverages consisting wholly of juices of Australian fruits." It was found that the lemon cordial contained 29 per cent. by volume of fruit juice and 26.4 per cent. by weight and raspberry balm cordial contained 13.4 per cent. of fruit juice by volume and 11.44 per cent. by weight: *Held*, by RICH, J., of the High Court of Australia that the goods were exempt from sales tax. On appeal, the Full Court consisting of LATHAM, C.J., WEBB and FULLAGAR, JJ., reversed the decision of RICH, J., and held that the goods were not exempted from sales tax.—*THE FEDERAL COMMISSIONER OF TAXATION v. F. H. FAULDING & CO., LTD.*

FERTILIZER

Bone-meal or crushed bone—Whether taxable—Whether fertilizer and exempt—Rule of interpretation of words in statutes.—Even if crushed bones and bone-meal were to be taken as fertilizers within the ordinary meaning of the term "fertilizer", yet the exemption granted by entry No. 22 to Schedule I of the Madhya Pradesh General Sales Tax Act, 1958, to fertilizers would not be operative in the face of entry No. 11 of Part III of Schedule II, read with entry No. 2 of Schedule III, making transactions of bones of animals including powdered bones expressly subject to tax. The three aforesaid entries must be read harmoniously and, so read, their effect is clearly to impose sales tax on bones of animals

which include crushed bones and bone-meal. The interpretation or definition clause occurring in a statute can be used only for the purpose of interpreting words appearing in that statute and not for the purpose of interpreting words appearing in other statutes. To take a word bearing a peculiar meaning in a particular Act and to clothe that word with the same meaning when found in a different context in a different Act is a fallacious process of interpretation. It is wholly irrelevant for the purpose of assessment of sales tax to make an analysis of the crushed bone or bone-meal manufactured by the assessee in order to find out whether it satisfies the standards prescribed in the Schedule appended to the Fertilizer (Control) Order, 1957.—*Commissioner of Sales Tax, Madhya Pradesh v. Sagar Bone Mills, Sagar*: No. 1 [1966] 18 S.T.C. 338 (M.P.).

—For the period 1st April, 1959, to 31st August, 1959, which was governed by the M.P. General Sales Tax Act, 1958, bone-meal or crushed bone is taxable under entry No. 11 of Part III of Schedule II read with entry No. 2 of Schedule III. Crushed bones and bone-meal, which when applied to soil, promote field and horticultural crops, are fertilizers. Therefore for the period before 1st April, 1959, which was governed by the C.P. and Berar Sales Tax Act, 1947, bone-meal and crushed bone are exempt from payment of sales tax under entry No. 25 of Schedule II. It is wholly irrelevant for the purpose of assessment of sales tax to make an analysis of the crushed bone or bone-meal manufactured by the assessee in order to find out whether it satisfies the standard prescribed in the Schedule appended to the Fertilizer (Control) Order, 1957. *Commissioner of Sales Tax, Madhya Pradesh v. Sagar Bone Mills, Sagar*: No. 1 [1966] (18 S.T.C. 338) followed. *Ramavatar Budhaisprasad v. Assistant Sales Tax Officer, Akola* [1961] (12 S.T.C. 286; A.I.R. 1961 S.C. 1325) referred to. —*Commissioner of Sales Tax, Madhya Pradesh v. Sagar Bone Mills, Sagar*: No. 2 [1966] 18 S.T.C. 351 (M.P.).

Fertilizer—"Chemicals of all kinds"—Chilean nitrate—Whether fertilizer and exempt from sales tax or taxable as chemical—Interpretation of statutes—U.P. Sales Tax Act (15 of 1948), Secs. 3, 3-A, 4—Notification No. S.T. 119/X-928-1948 dated 7th June, 1948—Notification No. S.T. 117/X-923-1948 dated 8th June, 1948.—*Girja Shanker Dubey v. Commissioner of Sales Tax* [1968] 21 S.T.C. 127 (All.). (See Chemicals page 251 *supra*).

Firewood

Firewood—Timber—Manufacturer of Agricultural implements—Purchase of babul wood—Whether purchase exempt as firewood under entry 19 of

Schedule A or liable to tax as timber under entry 32 of Schedule C, Bombay Sales Tax Act (51 of 1959).—If a commodity which is commercially sold or purchased falls under any of the articles mentioned in Schedule A of the Bombay Sales Tax Act, 1959, the exemption will be immediately attracted, irrespective of what use is made or what the intention of the purchaser is. Under entry 19 in Schedule A of the Act purchases and sales of "firewood and charcoal" were completely exempt from tax; but under entry 32 of Schedule C purchases and sales of "timber (other than firewood) and bamboo whether whole or split" were liable to tax. The assessee manufacturing agricultural implements and parts for bullock-carts, purchased for that purpose babul wood consisting of the trunk, twigs and parts of the tree, all loaded in a cart, used the wood mostly and substantially in the manufacture of agricultural implements and sold the residue as firewood. It was found by the Tribunal that babul wood was extensively used both as timber and as firewood: *Held*, that as the entire tree which had fallen was sold as a cart-load to the assessee and as the commodity had not undergone the manufacturing process of chopping, which would reduce it to firewood by converting it into another commercial commodity, it could not be said that the assessee had purchased firewood. Therefore the assessee's purchase of wood would not be covered by entry 19 of Schedule A but would be covered by entry 32 of Schedule C.—*The State of Gujarat v. Keshavlal Mangubhai* [1968] 22 S.T.C. 271 (Guj.).

Foodgrains

Notification exempting sale of foodgrains on obtaining exemption certificate—Validity—Power of Government to fix fees—Effect of notification—U.P. Sales Tax Act (XV of 1948), Secs. 3, 4(a), (b)—Notification dated 30th September, 1956.—*Firm Ram Prasad Banwari Lal v. Sales Tax Officer, Moradabad* [1959] 10 S.T.C. 48 (All.).

Levy of exemption fee instead of sales tax—Nature of levy.—The provision for the levy of exemption fee in lieu of sales tax in the U.P. Sales Tax Act, 1948, is in the nature of a concession and is not the vested right of an assessee. Accordingly if an assessee wants to take advantage of the payment of exemption fee instead of sales tax, he should fully comply with the provisions of the rules and the orders made thereunder with regard to the admissibility of exemption fee. Where the petitioner, a dealer in foodgrains, failed to deposit the balance of the exemption fee in pursuance of an order of the Sales Tax Officer

determining the amount of exemption fee payable by him, the petitioner forfeited the concession which was allowed to him to pay exemption fee in lieu of sales tax. To the "compounding fee" or "penalty", which the dealers were asked to pay by Government order dated 8th November, 1958, for not paying the exemption fee within time, the provisions of section 15-A of the Act have no application. Accordingly, in order to require the dealer to pay this compounding fee, it was not necessary to obtain the previous approval of the Commissioner, nor was it necessary to issue a notice to the petitioner as required by section 15-A.—*SHYAM LAL v. ASSISTANT SALES TAX OFFICER, SHAHJAHANPUR, AND ANOTHER* [1962] 13 S.T.C. 1019 (All.).

—See also **PACKING MATERIALS**.

Iron and Steel

"Iron and steel"—*Scrap iron sold after conversion into bars, flats and plates—Exemption whether available.*—The respondent purchased scrap iron locally and imported iron plates from outside and after converting them into bars, flats and plates in his mills, sold them in the market: *Held*, that the respondent was entitled to exemption from sales tax under item 39 of Notification No. 58 dated October 24, 1953, issued under the Madhya Bharat Sales Tax Act, 2007 S. Scrap iron purchased by the respondent was processed for convenience of sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The bars, flats and plates sold by the respondent were "iron and steel" exempted under the notification. Decision of the Madhya Pradesh High Court affirmed.—*THE STATE OF MADHYA BHARAT (NOW THE STATE OF MADHYA PRADESH) AND OTHERS v. HIRALAL* [1966] 17 S.T.C. 313 (S.C.).

Kerosene

Kerosene—Sale of kerosene (an exempted article) in sealed tins—Sale price of tins—Whether liable to sales tax.—*GOVINDRAM RAMPRASAD OF INDORE v. ASSESSING AUTHORITY (SALES TAX) AND ANOTHER* [1957] 8 S.T.C. 407 (M.P.).

Exemption of kerosene—*Sale of kerosene in tins—Whether tins exempt.*—Where the assessee purchased kerosene in tins and sold the kerosene in tins, although kerosene was exempted from Madhya Bharat sales tax, the tins were not so exempted and they were therefore liable to sales tax. *Govindram Ramprasad v. Assessing Authority (Sales Tax) and Another* [1957] (8 S.T.C. 407; 1957 M.P.C. 286) followed.—*STATE OF MADHYA PRADESH v. R. R. CONTRACTOR & Co.* [1962] 13 S.T.C. 208 (M.P.).

Liquor

Country liquor—*Mritasanjibani Sura—Whether medicated wine or country liquor—Whether liable to sales tax.*—What is exempted from sales tax under item 10 of Notification No. STGL-60/51-4280 F.T. dated 2nd April, 1951, is country liquor including toddy and pachwai but potable foreign liquor and medicated wine are not exempted from sales tax and therefore medicated wine can be assessed to sales tax under the Bihar Sales Tax Act, 1947. *Mritasanjibani Sura* made by distilling a lot of medicinal herbs mixed with certain bases producing alcohol and used for medicinal purpose according to the prescriptions of Ayurvedic physicians is medicated wine and not country liquor, as commonly understood, and it is therefore not exempted from sales tax under item 10 of the notification dated 2nd April, 1951. The fact that the State of Bihar has imposed excise duty on *Mritasanjibani Sura* on the assumption that it is country liquor and the Union of India has got exclusive power to impose and realise excise duties on medicinal preparations containing alcohol does not conclude the matter.—*DR. NARESH CHANDRA GHOSE AND ANOTHER v. THE STATE OF BIHAR AND ANOTHER* [1959] 10 S.T.C. 50 (Pat.).

Meat

Dressed poultry—*Whether meat and exempt from payment of sales tax.*—Sale of "dressed poultry" can be regarded as sale of "meat" within the meaning of entry 4 of Schedule II to the Bombay Sales Tax Act, 1946.—*THE COLLECTOR OF SALES TAX, BOMBAY STATE v. GAURIMAL MAHAJAN AND SONS* [1959] 10 S.T.C. 452 (Bom.).

Milk

Exemption granted to sale of milk to actual consumers by co-operative societies and unions under notification—*Whether continues in force after G.O. No. 2790, Revenue, dated 24-9-1953.*—It could not be said that the exemption granted to the sale of milk to the actual consumers by co-operative societies and unions under G.O. Ms. No. 2333, Revenue, dated 7th September, 1951, continued in force after the passing of G.O. No. 2790, Revenue, dated 24th September, 1953. The Second Government order which was issued in supersession of the prior one, confined the exemption to sales by societies to other institutions and rescinded the earlier exemption granted to sales of milk to actual consumers.—*TADEPALLIGUDEM CO-OPERATIVE MILK SUPPLY SOCIETY LIMITED v. THE GOVERNMENT OF ANDHRA (NOW ANDHRA PRADESH)* [1959] 10 S.T.C. 26 (A.P.).

Powdered milk and condensed milk sold in sealed containers—*Whether milk or milk products.*

—Powdered milk and condensed milk are not milk within the meaning of section 4(1) of the U.P. Sales Tax Act, 1948, and therefore not exempt from sales tax. They are milk products within the meaning of Notification No. S.T. 119/X-928, dated 7th June, 1948, and if they are sold in sealed containers, they are not exempt from sales tax.—*NESTLE'S PRODUCTS (INDIA) LTD. v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 606 (All.).

Sweets prepared from milk, flour and sugar—Although milk, flour and sugar are exempt from sales tax under the Assam Sales Tax Act, sweets prepared from milk, flour and sugar are not exempt from sales tax.—*DELHI MISTANNA BHANDAR v. STATE OF ASSAM* [1957] 8 S.T.C. 258 (Assam).

Khowa—*Whether curd and exempt from sales tax.*—The words "milk", "condensed and powdered milk", "curd" and "butter-milk" used in entry No. 21 of Schedule I to the Madhya Pradesh General Sales Tax Act, 1958, must be understood in the sense they have in common parlance and in their popular meaning as understood by people who deal in those products. "Khowa" is in no sense condensed or powdered milk, or curd, or butter-milk and is therefore not exempt from tax under the Act. The meaning given to the word "curd" in the Hindi version of the C.P. and Berar Sales Tax Act, 1947, can be of no assistance in the construction of the word "curd" as used in entry No. 21 of Schedule I to the Act of 1958.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. SHRI HARICHAND CHANDULAL, BHOMA, SEONI* [1965] 16 S.T.C. 13 (M.P.).

Newspapers and Periodicals

Newspaper—*Meaning of*—*Law journal containing full reports of decisions of Courts*—*Whether newspaper entitled to exemption.*—The "Cuttack Law Times" a non-official monthly law journal containing, *inter alia*, reports of important decisions of the Orissa High Court, the Orissa Board of Revenue and the Supreme Court, is not a "newspaper" within the meaning of entry 54 in List II of the Seventh Schedule to the Constitution of India, 1950, and is therefore not entitled to exemption from sales tax under the Orissa Sales Tax Act, 1947. It is primarily meant to be a book of reference to be cited in the law courts. The fact that the journal was registered as a "newspaper" under the Post Office Act, 1898, and the Press and Registration of Books Act, 1867, could not be relied on for claiming the exemption. The interpretation put on the expression "newspaper" by the authorities under those Acts would not bind either the High Court

or the Sales Tax Department. Books containing authoritative reports for future reference can, by no strain of language, be said to contain "news" so as to become newspapers.—*P. S. V. IYER v. COMMISSIONER OF SALES TAX, ORISSA* [1960] 11 S.T.C. 608 (Ori.).

Periodicals—*Law reports issued in monthly parts*—*Whether a periodical.*—The "All India Reporter" which is issued in monthly parts containing law reports is a periodical for the purpose of item 26 of the old unamended Schedule II to the C.P. and Berar Sales Tax Act, 1947. Consequently subscriptions received for the regular supply of the monthly parts should be excluded from the turnover, as relating to the supply of tax-free goods, while the sale prices of the separate yearly volumes made out of the monthly parts cannot be excluded from the turnover.—*THE ALL INDIA REPORTER LTD. v. THE STATE* [1952] 3 S.T.C. 219.

Sale of old newspaper as waste paper—*Whether sale of newspaper and exempt from tax.*—Sale of bundles of old newspapers as waste paper is not sale of newspapers and is therefore not exempt under section 4 of the U.P. Sales Tax Act, 1948. What was a newspaper once, can cease to be a newspaper after a lapse of time and if it is sold after it has ceased to be a newspaper it is not a sale of newspaper. The articles that have been exempted under section 4 are articles of common and daily necessity and use. The jurisdiction of the Judge (Revisions) under section 11(1) is to refer to the High Court only questions of law arising out of the order passed by him under section 10. Where in a revision under section 10 the assessee did not raise a question, the Judge (Revisions) cannot refer it to the High Court under section 11. *Industrial and Commercial Service, Allahabad v. Commissioner of Sales Tax, U.P., Lucknow* [1963] (14 S.T.C. 299) referred to.—*CHANDRA SHEKHAR NEWAL KISHORE v. COMMISSIONER OF SALES TAX, U.P.* [1963] 14 S.T.C. 443 (All.).

Weeklies and magazines—*Whether newspapers.*—In the absence of an express definition of the word "newspaper" in the Constitution, the definition most favourable to the assessee should be adopted in ascertaining the meaning of that word. The provisions contained in the Indian Post Office Act, 1898, regarding registration of newspapers would also affect revenue and as such no impropriety would be involved in following the more liberal definition of that word in that Act. Consequently weeklies and magazines, like Shankar's Weekly, Illustrated Weekly of India and the Eastern Economist are "newspapers" within the meaning of Article 269(1)(f) and item

92 of List I of the Seventh Schedule to the Constitution of India.—**A.H. WHEELER AND CO. (P.) LTD. v. THE STATE OF BIHAR** [1960] 11 S.T.C. 18 (T.D.).

Paper

Notification exempting sale of paper—"Paper", meaning of—Job printer—Execution of orders for receipt books, registers, visiting cards and letter heads on paper supplied by printer—Nature of contract—Whether a contract of sale—Whether sale of paper—Liability to sales tax—U.P. Sales Tax Act (XV of 1948).—**THE KANPUR JOURNALS LTD. v. COMMISSIONER OF SALES TAX, U.P.** [1956] 7 S.T.C. 661 (All.).

—See also **NEWSPAPERS and PERIODICALS** *supra*.

Salt

Gunny bags in which salt is packed—*Whether exempt.*—Any exemption of an article must be strictly construed and confined to the exemption itself and not extended. Consequently, the exemption of salt from sales tax cannot be relied on for the purpose of claiming exemption for the gunny bags in which salt is packed on the ground that salt cannot be sold except after being put into gunny bags. Anybody who buys and sells gunny bags, even though along with the salt, would be liable for sales tax as being a "dealer" of "goods" within the meaning of section 2(b) of the Madras General Sales Tax Act. The question whether the dealer has made any profit in respect of the sale of gunny bags is irrelevant for the purposes of sales tax. If a man is a "dealer" in "goods" he will be liable to pay sales tax on his "turnover" even if he has suffered a loss.—**VARASUKI AND CO. v. THE PROVINCE OF MADRAS** [1951] 2 S.T.C. 1 (Mad.).

Silk

Whether artificial silk is exempted—A notification issued by the Government of Mysore directed that "the sale of filature silk, foreign silk and charka silk twisted by hand shall be exempt from taxation" under section 3(1) of the Mysore Sales Tax Act, 1948. The question was whether the sale of artificial silk manufactured in foreign countries and imported to India was exempt from taxation by virtue of the notification: *Held*, that silk, be it "filature", "foreign" or "charka" as termed in the notification must be taken to have reference to the thread produced by the silkworm and not to what is silk-like. Therefore the sale of artificial silk was not exempt by virtue of the notification.—**DEPUTY COMMISSIONER OF SALES TAX, BANGALORE v. DHARMAPRAKASHA S. V. SREENIVASA SETTY** [1954] 5 S.T.C. 180 (Mys.).

Artificial silk—Terylene, Terne, Dacron, Nylon, Nylex etc.—Whether artificial silk and exempt from sales tax—Assessing authority issuing notice to reopen assessments of earlier years on the ground that they are not artificial silk—Writ of prohibition—Maintainability—Constitution of India, Article 226—**MADRAS General Sales Tax Act (1 of 1959), Third Schedule, item 4.**—**KISHINCHAND CHELLARAM AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, CHINTADRIPIPET DIVISION, MADRAS-2, AND OTHERS** [1968] 21 S.T.C. 367 (Mad.) (see page 78 *supra*).

Sarees manufactured by using pure and artificial silk yarns—*Whether textiles made of pure silk—Whether entitled to exemption.*—Sarees manufactured by the employment of pure silk yarn along with artificial silk yarn are not "pure silk" textiles and are therefore entitled to the exemption under item 8A of the Fifth Schedule to the Mysore Sales Tax Act, 1957. **Canara Jewellers and Others v. Commercial Tax Officer, South Kanara** [1962] (13 S.T.C. 668) referred to.—**D. ARASAPPA v. COMMISSIONER OF COMMERCIAL TAXES, MYSORE, BANGALORE** [1969] 23 S.T.C. 68 (Mys.).

Soaps

Certain description of soaps—*Whether exempt under Bengal Finance (Sales Tax) Act, 1941, but liable to tax under West Bengal Sales Tax Act, 1954—Scope of Notification No. 2346 F.T. dated 1st December, 1954.*—Soaps as described in items Nos. (1) to (9) of the Notification No. 2346 F.T., dated the 1st December, 1954, whether manufactured in a factory or not, are all exempt from the operation of the Bengal Finance (Sale Tax) Act, 1941. So far as item No. (10) of the notification is concerned, there is an exception to the effect that jute batching emulsifier and other description of soaps not manufactured in a factory shall not come under item (10).—**BENOY KRISHNA BOSE v. COMMERCIAL TAX OFFICER AND OTHERS** [1966] 17 S.T.C. 35 (Cal.).

Sugar

Articles made from sugar—*Whether exempt.*—Misri, Batasa, Makhana, Ola and toys made from sugar are not merely sugar and the fact that sales tax has been paid on sugar is no reason for not levying sales tax on them. They are also not Deshi sweetmeats so as to exempt them under serial No. 14 of the Schedule to the Rajasthan Sales Tax Act, 1954.—**JETHMAL RAMSWAROOP v. THE STATE** [1959] 10 S.T.C. 270 (Raj.).

Sale of sugar, an exempted commodity, packed in gunny bags.—The turnover of containers or

packing materials in which goods, whether exempted or otherwise, are contained or packed is liable to sales tax. Where an exempted commodity like sugar is packed in gunny bags, it cannot be said that the gunny bags have been so inseparably integrated with sugar that they have lost their identity or have become part of the exempted goods.—*NIZAM SUGAR FACTORY LTD. v. COMMISSIONER OF SALES TAX, HYDERABAD* [1957] 8 S.T.C. 61 (Hyd.).

Sugar—*Whether includes sugar candy.*—Sugar which was exempted from the levy of sales tax by two notifications issued by the State Government under G.O. No. 4585, Revenue, dated 12th December, 1957, did in the context in which the exemption was granted take in sugar candy also. *Abdul Malik and Co. v. Commercial Tax Officer* [1963] (14 S.T.C. 214) relied on.—*VASANTHA & Co. v. THE STATE OF MADRAS* [1963] 14 S.T.C. 696 (Mad.).

"Batasa", "Chiranj" and "Mishri"—*Whether sugar and exempt or sweetmeats.*—A word like sugar, which has not been defined in the Act and which is a word of everyday use, must be understood in the sense in which it is understood in general usage. Therefore products like "batasa", "chiranj" and "mishri", although wholly made of sugar, cannot be regarded as sugar within the meaning of entry 41 in Schedule I of the Madhya Pradesh General Sales Tax Act, 1958. They are also not "sweetmeats" within the meaning of entry 1 of Schedule III.—*CHANNULAL MOTILAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1965] 16 S.T.C. 297 (M.P.).

Patasa, harda and alchidana—*Whether "sugar" and exempt from sales tax*—Patasa, harda and alchidana fall within the definition of "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959, and their sales are exempt from the payment of sales tax. The word "sugar" in entry 47 is intended to include within its ambit all forms of sugar, that is to say, sugar of any shape or texture, colour or density and by whatever name it is called. Decision of the Gujarat High Court affirmed.—*THE STATE OF GUJARAT v. SAKARWALA BROTHERS* [1967] 19 S.T.C. 24 (S.C.).

Spirit

French Polish—*Exemption of goods on which duty is levied under Madras Prohibition Act, 1937—Payment under Prohibition Act of licence fee for denatured spirit used in the manufacture of French Polish—Claim for exemption of French Polish.*—Section 4 of the Madras General Sales Tax Act, 1939, provided, *inter alia*, that the provisions of

that Act "shall not apply to any goods on which duty is or may be levied" under the Madras Prohibition Act, 1937: *Held*, that the gallonage fee paid under the Madras Prohibition Act on denatured spirit used in the manufacture of French Polish will not amount to levy of a duty on French Polish under the Madras Prohibition Act and therefore section 4 of the Madras General Sales Tax Act, 1939, cannot exonerate a manufacturer of French Polish, from liability to sales tax under that Act.—*SHRI SHAILA INDUSTRIAL AND SPIRITUAL COLONY CHARITIES v. STATE OF KERALA* [1958] 9 S.T.C. 12 affirmed on appeal. See below :—

French Polish—*Whether exempt.*—Section 4 of the Madras General Sales Tax Act, 1939, guards against double taxation and under that provision a dealer who has already paid some charge on the sales of the goods under the Madras Abkari Act, 1886, the Madras Prohibition Act, 1937, or the Opium Act, 1878, would not be liable again to pay sales tax. The words "any goods on which duty is or may be levied" in section 4 are also covered by the word "sales" used earlier in the section and therefore sales of French Polish are not exempt under that section.—*SHRI SHAILA INDUSTRIAL AND SPIRITUAL COLONY CHARITIES v. STATE OF KERALA AND OTHERS* [1960] 11 S.T.C. 631 (Ker.).

Denatured spirit—*Levy of sales tax under Delhi Act—Legality—Fee levied under rules—Whether sales tax or duty under Punjab Excise Act—Scope of item 40, Second Schedule, Delhi Act.*—The petitioners carrying on business in denatured spirit and holding licence under the Punjab Excise Act, 1914, as extended to Delhi were registered as dealers under the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi. The petitioners contended that the fee of Rs. 3 per imperial gallon charged on them under the Delhi Liquor Licence Rules or under the Delhi Liquor Permit and Pass Rules was either a duty or a tax and therefore the sales of denatured spirit were exempt from the payment of sales tax under item 40 of the Second Schedule of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi: *Held*, (1) that the levy of Rs. 3 per imperial gallon could not be considered as sales tax; (2) that item 40 in the Second Schedule to the Delhi Act when it speaks of duty which is or may be levied under the Excise Act, must mean the duty levied or capable of being levied lawfully; (3) that there was no provision in the Excise Act under which a duty could be levied lawfully on denatured spirit and if such a duty could not be levied the court would not assume

that the levy of Rs. 3 per imperial gallon was such a duty; (4) that the levy of duty on denatured spirit being illegal and perhaps unconstitutional, its colourable levy—assuming without holding it to be so—would not render the levy of sales tax under the Delhi Act unlawful.—*SHRI GULZARI LAL BHARGAVA AND ANOTHER v. CHIEF COMMISSIONER, DELHI, AND OTHERS* [1967] 19 S.T.C. 389 (Punj.).

Drugs and toilet preparations containing alcohol—Levy of excise duty—Whether articles entitled to exemption from sales tax.—Item 37 of Schedule B attached to the East Punjab General Sales Tax Act, 1948, exempted from sales tax “all goods on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878.” The question was whether drugs and toilet preparations containing alcohol were exempt from sales tax on the ground that excise duty had been levied by the Government on the alcoholic contents of those articles: *Held*, that the excise duty, which was being charged by the Punjab State by virtue of Article 227 of the Constitution, was clearly a duty which was being levied under the Punjab Excise Act, 1914, even though section 3(6)(c) was omitted by the Adaptation of Laws Order, 1950, that it was the finished article itself and not a portion of it which was being subjected to excise duty and that therefore the articles were exempt from sales tax.—*THE STANDARD DRUGS Co. v. THE STATE OF PUNJAB* [1961] 12 S.T.C. 446 (Punj.).

Medicinal preparations containing spirit—Whether entitled to exemption.—Where the assessee, a distributor of certain medicinal preparations, claimed exemption from sales tax under section 4 of the Madras General Sales Tax Act, 1939, on the ground that excise duty was paid on the medicines under the Madras Prohibition Act, 1937: *Held*, that medicines as such were not subject to excise duty under the Madras Prohibition Act, 1937, and it was only the spirituous content thereof which was liable to duty. Consequently the exemption under section 4 could not be availed of by the assessee for the entire turnover of medicines.—*THE ALEMBIC DISTRIBUTING AGENCY v. THE STATE OF ANDHRA PRADESH* [1961] 12 S.T.C. 15 (A. P.).

Spirituous medicinal preparations on which duty is imposed under Medicinal and Toilet Preparations (Excise Duties) Act, 1955—Whether exempt.—In view of section 7 of the Travancore-Cochin Interpretation and General Clauses Act, 1125, the reference in section 4 of the General Sales Tax Act, 1125, to the Cochin Abkari Act must be taken to be reference to the Medicinal and Toilet

Preparations (Excise Duties) Act, 1955, which came into force on 1st April, 1957, and replaced those provisions in the Cochin Abkari Act which provided for the imposition of duty on spirituous medicinal preparations. Therefore spirituous medicinal preparations were not goods relating to which sales tax could be imposed under the General Sales Tax Act, 1125.—*JAGANATHAN v. SALES TAX OFFICER* [1964] 15 S.T.C. 702 (Ker.).

Sales of medicinal and toilet preparations—Liability to sales tax.—Duty can be imposed under the Travancore-Cochin Prohibition Act, 1950, on “medicinal and toilet preparations” and so by virtue of section 4 of the General Sales Tax Act, 1125, exemption is granted from liability towards sales tax on the turnover relating to sales of “medicinal and toilet preparations”.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE, QUILON, AND ANOTHER v. PHARMACEUTICALS AND CHEMICALS (TRAVANCORE) PRIVATE LTD. AND ANOTHER* [1966] 17 S.T.C. 24 (Ker.).

Sale of goods on which duty is levied under Punjab Excise Act, 1914—Imposition of duty on medicinal preparations containing alcohol under Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955) which repealed the Excise Act—Whether such preparations entitled to exemption.—Entry No. 37 of Schedule B of the Punjab General Sales Tax Act, 1948, exempted from sales tax “all goods on which duty is or may be levied under the Punjab Excise Act, 1914”: *Held*, that although after 1955, excise duty was being imposed on medicinal preparations containing alcohol not under the provisions of the Punjab Excise Act, 1914, but under the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, which repealed the Punjab Excise Act, 1914, in view of section 8 of the General Clauses Act, 1897, dealers in such articles were entitled to the exemption contained in entry 37 of Schedule B of the Punjab General Sales Tax Act, 1948. There is nothing in section 8 of the General Clauses Act, 1897, to indicate that the words “former enactment” mean only a Central enactment and not a State enactment, and the Courts would not be justified in reading in that section words which are not there and thereby to place a narrow and limited construction on the words “former enactment”. A Central enactment can repeal and re-enact the provisions of a previous Central enactment as well as those of a previous State enactment, and there is no valid reason to hold that the words “former enactment” have reference only to the former Central enactment and not to the former State enactment.—*THE*

PUNJAB STATE AND OTHERS *v.* SUKH DEV SARUP GUPTA [1966] 18 S.T.C. 426 (Pun.).

Medicinal preparations containing alcohol—
Whether exempt after enactment of Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955).

—The petitioner claimed that its turnover of medicinal preparations was exempt from tax up to 31st March, 1959, under section 6 read with entry 32 of Schedule II of the Central Provinces and Berar Sales Tax Act, 1947, and from 1st April, 1959, to 31st December, 1960, under section 10(1) read with entry 23 of Schedule I of the Madhya Pradesh General Sales Tax Act, 1958, inasmuch as it had paid duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, on the medicinal preparations sold by it and the references in the entries to the Central Provinces and Berar Prohibition Act, 1938, and the Central Provinces and Berar Excise Act, 1915, should be read, by virtue of section 8 of the General Clauses Act, 1897, as references to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955: *Held*, (1) that the entries exempt from tax only those goods on which duty is or may be levied under the Acts mentioned in the entries and not the goods in the manufacture of which alcohol has been used as an ingredient, and on which alcohol duty is or may be levied under the Acts referred to in the entries. Therefore no exemption could be claimed from sales tax on the turnover of sales of medicinal preparations merely because duty was paid on alcohol used in the manufacture of those preparations; (2) that the words "repeals", "re-enacts" and "the provisions so repealed" occurring in section 8 of the General Clauses Act, 1897, limit the operation of the rule of "construction of references" only where any provision of a former enactment is repealed and re-enacted. In such a case, it is only the particular re-enacted provision that can be read in place of the repealed provision. The rule of construction laid down in that section does not authorise the substitution of any provision whatsoever of the repealing enactment for the provision repealed of a former enactment; (3) that there is a clear distinction between an excise duty levied by the State and an excise duty levied by the Central Government, and a provision taking away the State's right to levy the duty and giving it to the Central Government cannot in any sense be regarded as "re-enactment" within the meaning of section 8 of the General Clauses Act, 1897, of the provision in the State Act giving to the State the right to levy excise duty on medicinal preparations containing alcohol; (4) that as the Central Provinces and Berar Prohibition Act,

1938, did not contain any provision imposing a duty on medicinal preparations, no question of repeal and re-enactment of such a non-existent provision could arise so as to attract section 8 of the General Clauses Act, 1897. Similarly, the reference in the exemption entries to the Central Provinces and Berar Excise Act, 1915, could not be read as reference to the Medicinal and Toilet Preparations (Excise Duties) Act of 1955; (5) that therefore the petitioner was not entitled to the exemption claimed. The exemption granted by the entries proceeded on the basis that as the preparations had already been subjected to duty under the Excise Act of 1915 and the State had benefited by it, a second tax in the form of sales tax should not be levied on the sale of such preparations. With the taking away of the State's power to levy excise duty on medicinal preparations containing alcohol, this basis disappears, and there can be no justification for making the State lose both the excise duty as well as the sales tax. Section 8 of the General Clauses Act, 1897, uses the words "unless a different intention appears", and the "different intention" is shown by the frame of the entries granting exemption from sales tax to the medicinal preparations on the assumption of their liability to duty under the State Excise Act. *Jagannathan v. Sales Tax Officer* [1964] (15 S.T.C. 702) dissented from. *Alembic Distributors Ltd. v. Assistant Commissioner of Sales Tax* [1962] (13 S.T.C. 64) referred to.—VINO CHEMICAL & PHARMACEUTICAL WORKS *v.* THE SALES TAX OFFICER, RAIPUR, MADHYA PRADESH, AND ANOTHER [1966] 18 S.T.C. 466 (M.P.).

Tobacco

Tobacco, whether exempt—"Hooka tobacco".—The State Government is empowered to levy sales tax on tobacco notwithstanding that excise duty upon tobacco has been levied by the Central Government. Neither the Government of India Act, 1935, nor the Constitution of India, 1950, is a bar to a levy of sales tax on tobacco by the Government of the State of Assam. Tobacco, when sold as tobacco leaf, is subject to sales tax. What is exempted under item No. 17 of Schedule III attached to the Assam Sales Tax Act, 1947, is "hooka tobacco" and not tobacco, all tobacco being tobacco leaf.—*RAMANANDA JOY KISSEN v. COMMISSIONER OF TAXES (SALES), ASSAM* [1951] 2 S.T.C. 11 (Assam).

"Tobacco and all its products"—Whether include crushed tobacco stalks—Whether entitled to exemption.—The expression "tobacco and all its products" occurring in Schedule V of the Andhra Pradesh General Sales Tax Act, 1957, as amended

by the Andhra Pradesh General Sales Tax (Amendment) Act, 1958, should be interpreted in the light of the definition of "tobacco" contained in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Therefore crushed tobacco stalks come within the purview of the expression "tobacco and all its products" and are therefore not subject to levy of tax for the periods subsequent to 1st April, 1958. For periods prior to 1st April, 1958, a dealer in crushed tobacco stalks would be entitled to the exemption only if he established that he had paid the additional duty of excise as contemplated by the notification exempting goods on which additional duty of excise was imposed by the Central Government. T.R.C. No. 52 of 1958 distinguished.—K. N. KKRISHNAIAH SETTY & SONS *v.* DEPUTY COMMERCIAL TAX OFFICER, HINDUPUR [1963] 14 S.T.C. 1 (A.P.).

Crushed and sieved tobacco—*Whether "tobacco not subject to any process of manufacture"—Whether exempt.*—In order that the process to which an article is subjected should be a manufacturing process it is not essential that the article must change its nature; it is enough if it becomes a different commercial article. The question whether crushed and sieved tobacco is a commercially different article from tobacco leaves is a question essentially of fact. Where there is a finding by the Judge (Revisions) that crushed and sieved tobacco is commercially a different article, crushing and sieving of tobacco must be held to be a manufacturing process within the meaning of the Notification No. S.T. 119-X-928-1948 dated 7th June, 1948. Therefore crushed and sieved tobacco is not exempted from taxation under item 9 of that notification.—BADRI PRASAD PRABHA SHANKER AND ANOTHER *v.* SALES TAX COMMISSIONER, U.P., LUCKNOW [1963] 14 S.T.C. 208 (All.).

Hand-made biris—*Whether included in definition of tobacco and exempt from payment of sales tax.*—"Tobacco" as defined in the Additional Duties of Excise (Levy and Distribution) Act, 1957, includes hand-made biris, i.e., biris manufactured from tobacco by a process of manual labour, and therefore hand-made biris are exempt from payment of sales tax under the Notification of the Government of Bihar, Finance (Commercial Taxes) Department No. STGL-P-601/57-18422 F.T. dated 14th December, 1957.—THE SINGHBHUM TOBACCO AND BIRI MERCHANTS' ASSOCIATION AND ANOTHER *v.* ASSISTANT SUPERINTENDENT OF SALES TAX CHAIBASA, AND ANOTHER [1960] 11 S.T.C. 808 (Pat.).

Tobacco seeds—*Whether tobacco in any form.*—Section 4 of the Madras General Sales Tax Act,

1939, exempted from the operation of the Act the sale of tobacco in any form whether manufactured or not. Tobacco seed which is a commodity distinct from tobacco does not come within the scope of the section. Packing materials in which tobacco is packed cannot come within the scope of tobacco in any form within the meaning of section 4. In respect of a certain sum representing the estimated value of packing materials in which tobacco was consigned to purchasers outside the State of Madras the assessee claimed exemption under section 4 of the Act, rule 5(1)(g)(ii) of the Turnover and Assessment Rules, and Article 286(1)(a) read with the Explanation thereto of the Constitution: *Held*, that the assessee was not entitled to the exemption.—INDIAN LEAF TOBACCO DEVELOPMENT CO., LTD. *v.* THE STATE OF MADRAS (NOW ANDHRA) [1954] 3 S.T.C. 354 (Mad.).

Snuff—"Ipco Dental Creamy Snuff" used for application to the gums—*Whether tobacco and exempt from sales tax.*—Entry 49 in Schedule A of the Bombay Sales Tax Act, 1959, exempted from the levy of sales tax "tobacco as defined in item No. 4 of the First Schedule to the Central Excises and Salt Act, 1944," and item 4 defined tobacco as any form of tobacco, whether manufactured or not. By virtue of the definition of manufacture given in section 2(f)(i) in the Central Excises and Salt Act, 1944, in relation to tobacco, snuff would be tobacco within the meaning of entry 49 in Schedule A. The assessee was a manufacturing chemist who sold the preparation described as "Ipco Dental Creamy Snuff" which was generally applied to the gums. The preparation contained 55 per cent. snuff, 40 per cent. water, 2.5 per cent. preservative and 2.5 per cent. flavouring agents and it was in the form of a paste filled in collapsible tubes, which were packed in cartons. The question was whether it was tobacco and exempt from sales tax under entry 49 in Schedule A: *Held*, that the article sold by the assessee completely retained its essential character as snuff and had only certain flavouring agents, preservative and water added to it to change its physical condition in order to make it more acceptable to the customers who used it for application to the gums. The article was tobacco and was therefore exempt from sales tax by virtue of entry 49 in Schedule A to the Bombay Sales Tax Act, 1959. When a process is adopted for convenience of sale or making the article more acceptable to the customers, if the article in question retains its essential character, it has to be taxed as such article only and the processing will make no difference. The physical state or even the

composition may change but so long as the essential character of the article continues to remain the same, it has to be taxed as that commodity alone.—*B. DAR LABORATORIES v. THE STATE OF GUJARAT* [1968] 22 S.T.C. 160 (Guj.).

Zarda—*Whether a product of tobacco and entitled to exemption.*—Tobacco has not been defined in the Andhra Pradesh General Sales Tax Act, 1957, nor is there any indication that it has to be construed in accordance with the definitions given in other enactments. *Zarda* according to its dictionary meaning and in common parlance is nothing but a variety of chewing tobacco. Even taking into consideration the historical background which resulted in the issuing of the notification dated 13th December, 1957, and *zarda* was a commodity on which additional duty of excise was not imposed in accordance with the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the operation of the exemption granted by the notification was unaffected by the proviso to the notification. Therefore *zarda* was not exigible to sales tax by virtue of item 7 of Schedule 5 of the Andhra Pradesh General Sales Tax Act, 1957.—*J. SHAMDAS v. STATE OF ANDHRA PRADESH* [1967] 19 S.T.C. 412 (A.P.).

Chewing tobacco—Dealer in chewing tobacco—Claim for exclusion of value of packing material from taxable turnover—Whether allowable.—See *M. A. RAZACK AND COMPANY v. THE STATE OF MADRAS* [1967] 19 S.T.C. 135 (S.C.) under *PAKING MATERIALS infra*.

Tobacco and its products—Notification exempting tobacco and its products—Sale of cigarettes—Packing materials made of cardboard and dealwood—Whether subject of sale—Question of fact—Duty of Sales Tax Officer.—See *HYDERABAD DECCAN CIGARETTE FACTORY v. THE STATE OF ANDHRA PRADESH* [1966] 17 S.T.C. 624 (S.C.) under *PAKING MATERIALS infra*.

Vegetables

Betel leaves—Whether vegetables and exempt.—See *BETEL LEAVES* page 125 *supra*.

Pan and betel-nuts—Whether exempt only when sold together.—*GOPI MAL MOTI RAM v. THE STATE* [1956] 7 S.T.C. 281.

Salted peanuts and cashewnuts—*Whether fruits or vegetables.*—The Excise Tax Act R.S.C. 1927, Ch. 179 (Canada) which imposed a sales tax of 8 per cent. on the sale price of all goods produced or manufactured in Canada, contained in Schedule III, the following exemptions under the heading

"foodstuffs":—"Fruit, fresh, canned, frozen, dried or evaporated:—Vegetables fresh, canned, frozen, or dehydrated, not including pickles, relishes, catsup, sauces, olives, horseradish, mustard and similar goods": *Held*, that the words "fruit" and "vegetables" are used in their popular meaning and they would not include "nuts" of any sort, or the peanuts, salted peanuts or cashews. Salted peanuts and cashew-nuts are therefore not entitled to the exemption.—*HIS MAJESTY THE KING v. PLANTERS NUT AND CHOCOLATE COMPANY LTD.* [1951] C.T.C. 16 affirmed on appeal [1951] C.T.C. 365.

Flower plants—*Whether exempted under entry 7, Second Schedule, Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi.*—The word "vegetable" in entry 7 of the Second Schedule to the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi is intended to qualify the word "plants" as well in that entry. Consequently flower plants are not exempted under that entry.—*JUGINDER NURSERY v. COMMISSIONER OF SALES TAX, DELHI STATE, DELHI* [1966] 18 S.T.C. 343 (Delhi).

Green ginger—*Whether vegetable and exempt from sales tax.*—"Vegetables" in taxing statutes is to be understood as in common parlance, i.e., denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Therefore "vegetables" mentioned in the notifications dated 16th June, 1950, 25th March, 1958, and 23rd September, 1958, will take in "green ginger" also. From 10th December, 1960, the date on which the explanation was added to the notification exempting vegetables, there will be no exemption regarding the turnover relating to "green ginger", since "green ginger" is included in the term "ginger" in item 27 of Schedule I to the General Sales Tax Act, 1125. Where a dealer in green ginger had not applied for and obtained a licence as enjoined by the notifications, he would not be entitled to the exemption from tax. A dealer in green ginger was not liable to be taxed under the Central Sales Tax Act, 1956, for the period up to 1st October, 1958, since there was no sales tax on the sale of that commodity under the State Act. For the period from 1st October, 1958, in view of the wordings of the substituted sub-section (2) of section 8 and sub-section (2A) and the explanation to that sub-section, tax could be imposed under the Central Act even when the tax imposed by the State Act was only a purchase tax. Where in order to get the benefit of an exemption a licence has to be obtained under the State Act, it cannot be said that there is a general exemption from tax as contemplated

by section 8(2A) and the explanation to that subsection. Therefore for the period 1st October, 1958, to 31st March, 1959, tax could be imposed on the turnover of "green ginger" under the Central Sales Tax Act, 1956. It is not the dictionary meaning of a term that will invariably prevail in the construction of a statute. The rule of interpretation in such cases is that particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for the Legislature does not suppose our merchants to be naturalists, or geologists or botanists. A proviso is usually introduced by the word "provided"; but the absence of the word is not conclusive. The substance and not the form will control the interpretation. The mere styling of a provision as an "explanation" is not decisive of its character. An explanation should only explain or clarify. If it excepts, excludes or restricts, it is not an explanation but a proviso, and should be considered as operative only from the date of its introduction.—KRISHNA IYER v. STATE OF KERALA [1962] 13 S.T.C. 838 (Ker.) (F.B.).

Green ginger—Whether vegetable and exempted under item 6 of Schedule to Bengal Finance (Sales Tax) Act (6 of 1941).—Green ginger is vegetable and is included or capable of being included in the exempted item No. 6 of the Schedule to the Bengal Finance (Sales Tax) Act, 1941. The insertion of the words "*sabji, tarkari or sak*" in item 6 are ineffective to exclude articles like ginger or onion from the exemption. Schedules in each of the Sales Tax Acts must be examined and dealt with separately in the context of the language used in each of them respectively.—WAZI AHMED v. STATE OF WEST BENGAL AND OTHERS [1967] 20 S.T.C. 254 (Cal.).

Green ginger—Whether vegetable.—Although ginger is not used for the primary purpose of food, it is used to give flavour or taste to the food; and as ginger is grown in the kitchen garden and is used for the table, it is a vegetable and therefore not taxable under the Orissa Sales Tax Act, 1947.—JAGABANDHU SAHU v. STATE OF ORISSA [1969] 24 S.T.C. 240 (Ori.).

Withdrawal of exemption for "yam"—"*Karunai, senai, sembu and sirukizhangu*—Whether "yam".—Karunai and senai have been understood and treated all along as species of "yam" and therefore sales of these articles were liable to sales tax after amendment of Notification No. 42 in 1956 by which "yam" ceased to have the exemption from sales tax that had been granted

to vegetables. Sembu and sirukizhangu have not been described as "yam" and there is no real basis for including these two varieties of vegetables in the expression "yam". Therefore the general exemption accorded to vegetables, from which yam was excluded, should apply to the sales of sembu and sirukizhangu. Where there was a sale of vegetables packed in gunny bags and the price of gunny bags was included in the purchase price as well as in the sale price, sales tax was leviable on the turnover of gunny bags.—P. NAGARATHINAM AND BROTHERS v. THE STATE OF MADRAS [1960] 11 S.T.C. 342 (Mad.).

Sugar-cane—Whether vegetable.—Sugar-cane is vegetable and is therefore exempt from sales tax under Schedule II, item 8, of the Bombay Sales Tax Act, 1946. In a taxing statute, if two constructions are possible, the Court must lean in favour of that construction which gives relief to the subject.—THE STATE OF BOMBAY v. R. S. PHADTARE [1956] 7 S.T.C. 495 (Bom.).

—Sugar-cane cannot be said to be a green vegetable within the meaning of item No. 6 of Notification No. 9884-F.T. dated the 28th August, 1947, and is therefore not exempt from taxation under the provisions of the Bihar Sales Tax Act, 1947.—TIKHAN AGRICULTURAL CONCERN v. STATE OF BIHAR [1961] 12 S.T.C. 341 (Pat.).

—Having regard to the context of the expression "green vegetables" in Notification No. 9884-F.T. dated 28th August, 1947, and having also regard to the dictionary meaning of "vegetable", sugar-cane cannot be said to be a green vegetable within the meaning of item 6 in that notification and is therefore not exempt from taxation under the provisions of the Bihar Sales Tax Act, 1947.—MOTIPUR ZAMINDARY CO. LTD. v. THE STATE OF BIHAR [1959] 10 S.T.C. 413 (Pat.) affirmed on appeal to Supreme Court. See below.

—Sugar-cane does not fall within the term "green vegetables" and is therefore not exempt from sales tax under the exemption given by notification dated 28th August, 1947, issued under section 6 of the Bihar Sales Tax Act, 1947, *Motipur Zamindary Company Limited v. The State Bihar* [1959] (10 S.T.C. 413) affirmed. *Ramavatar Budhai Prasad v. Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 485; A.I.R. 1961 S.C. 1325) followed. *State of Bombay v. R. S. Phadtare* [1956] (7 S.T.C. 495) not approved.—MOTIPUR ZAMINDARY CO. (PRIVATE) LTD. v. THE STATE OF BIHAR AND ANOTHER [1962] 13 S.T.C. 1 (S.C.).

Notification exempting sales of vegetables—Withdrawal of exemption of certain vegetables by amending previous notification—Validity—Scope of power of Government to grant and withdraw exemptions under section 6(1).—By a notification dated 25th March, 1954, issued under section 6(1) of the Madras General Sales Tax Act, 1939, the Government of Madras exempted all sales of “flowers, vegetables, and fruits (other than potatoes, onions, nuts, coconuts, dehydrated vegetables, canned, preserved, dried or dehydrated fruits)” from the tax payable under the Act. This notification was amended by a further notification issued by the Government on 16th December, 1954, which in effect excluded from the scope of the exemption the sales of “sweet potatoes, yam and tapioca, garlic, ginger, green chillies and other similar varieties of vegetables which are used as spices and condiments and not as substantial articles of food”. The petitioner, who was a dealer in vegetables specialising particularly in the sale of yams, challenged the validity of the notification dated 16th December, 1954, on the following grounds: (i) The power granted by section 6(1) was to exempt from tax the sale of any specified class of goods and the class of goods exempted being vegetables, that section did not confer any power on the Government to exclude any items of vegetables from that class; (ii) The power of exemption in respect of sales of yams, ginger and green chillies having been once exercised by a notification, the Government had no jurisdiction to amend the terms of the notification granting the exemption; (iii) The levy of tax on vegetables was unlawful and in contravention of section 3 of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952): *Held*, (i) that the imposition of tax on sales of yams, ginger and green chillies was not in contravention of section 3 of Act LII of 1952 inasmuch as the Madras General Sales Tax Act, 1939, was enacted long before Act LII of 1952 and the notification dated 16th December, 1954, did not impose any tax liability but only suspended the liability to taxation under section 3 for a specified period; (ii) that the power of granting exemption conferred on the Government was not exhausted when the notification dated 25th March, 1954, was issued and that the Government had the power under section 6(1) to modify or amend that notification; (iii) that the Government had the power under section 6(1) to grant exemption in regard to certain specified classes of vegetables and therefore had also the power to exempt “all classes of vegetables other than certain specified classes”. Consequently the notification dated 16th December, 1954, was

within the scope of the power of the Government and was validly issued. The restriction contemplated by section 6(2)(b) is only a “restriction” as to the manner in which a dealer to whom exemption is granted is required to conduct his business, *viz.*, in the matter of keeping his accounts, filing returns etc., and not a “restriction” of the articles or goods as regards which the exemption is granted.—*K. PARTHASARATHY MUDALIAR v. THE STATE OF MADRAS* [1957] 8 S.T.C. 632 (Mad.)

Vegetable Oil

Cocogem—Whether vegetable oil.—Cocogem is a vegetable oil for the purpose of item 12 of the old unamended Schedule II to the Central Provinces and Berar Sales Tax Act, 1947. It is a vegetable oil in the sense that it is purely of vegetable origin as opposed to animal origin. The mere fact that, in the course of manufacture, the raw material is subjected to “a highly complicated process of refinement” does not affect the character which it derives from its origin.—*TOMCO SALES DEPARTMENT, KINGSWAY, NAGPUR v. THE STATE* [1952] 3 S.T.C. 463.

Sale of vegetable oil to industry engaged in the production of refined vegetable oil—Whether exempt.—Item No. 23 of the Schedule to the Notification No. 75/7 SR/55 (51) dated the 24th November, 1953, published in the Madhya Bharat Government Gazette dated the 3rd December, 1953, exempted “steam coal and all oils required in vanaspati industry (vegetable oil)” from the levy of sales tax: *Held*, that the expression “vanaspati industry” in the notification was wide enough to include an industry engaged in the production of refined vegetable oil and the sale of vegetable oil to such an industry would not be liable to sales tax.—*UJJAIN OIL MILLS PRIVATE LTD. v. THE SALES TAX OFFICER, UJJAIN* [1960] 11 S.T.C. 272 (M.P.).

Person owning country oil chekku also purchasing selling oil—Right to exemption.—Where the accused was not dealing exclusively in the oils expelled by the country chekku ran by him but was purchasing from others and trading on that oil also, he was not entitled to the exemption conferred by Notification G. O. No. 1323 dated 6th May, 1953.—*MUTHIAH CHETTIAR, In re* [1960] 11 S.T.C. 287 (Mad.).

Notification G. O. No. 1091—Whether confines exemption to sale of castor oil and does not extend to purchase of castor seeds.—While construing any provisions of exemption from taxation strictly, one should not lose sight of the actual language employed in the rule and also the purpose for

which it has been made. Notification G. O. No. 1091 Revenue dated 10th June, 1957, ran as follows:—"In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957) the Governor of Andhra Pradesh hereby directs that every person owning or having an interest in single country oil ghani or hand oil press, wherein oil is produced without employing electricity or any other power at any stage of the conversion of the seed into oil, and dealing exclusively in the produce of such ghanis and presses, shall be exempt from payment of any tax under the said Act in respect of such dealings": *Held*, that the exemption under the notification covered not only the sales tax on castor oil, but also the tax on the purchase value of the castor seeds used for the production of the oil.—**MANDAVA BALARAMA KRISHNAMURTHI v. THE STATE OF ANDHRA PRADESH AND ANOTHER** [1961] 12 S.T.C. 83 (A.P.).

Yarn

Dyed yarn—Entry No. 20 in Schedule II of the C.P. and Berar Sales Tax Act, 1947, exempted from tax sales of "yarn excluding sewing and knitting thread": *Held*, that yarn does not cease to be tax-free merely because it is dyed and therefore sales of dyed yarn are not taxable under the Act.—**NAGPUR YARN AND DYES MERCHANTS ASSOCIATION v. STATE OF BOMBAY AND OTHERS** [1958] 9 S.T.C. 530 (Bom.).

Miscellaneous

Amending Act removing gur from list of exempted goods—Effect.—See **SURAJ BHAN HARI SHANKER v. SALES TAX OFFICER** [1962] 13 S.T.C. 409 (All.).

Bullion—Sales of bullion, when exempted.—In order to claim exemption under rule 5(b) of the Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, it must be a sale of bullion only. The benefit of the provisions contained in rule 5(b) does not arise where the proviso applies. The proviso applies to a sale of bullion prepared by melting any ornament or article made of gold or silver, either alone or partly with bullion. Where the business of the applicants, a firm of bullion merchants, was not merely the purchasing of bullion from both registered and unregistered dealers and selling it after refining, but also the purchasing of old ornaments which they melted and sold as bullion: *Held*, that the applicants were not entitled to the exemption but were liable to pay sales tax under the Bombay Sales Tax Act, 1953.

—**SHAH MANEKCHAND KUNDANMAL & CO. v. THE STATE OF BOMBAY** [1960] 11 S.T.C. 50 (T.D.).

Exemption fee instead of sales tax—Nature of levy.—See **SHYAM LAL v. ASSISTANT SALES TAX OFFICER, SHAHJAHANPUR, AND ANOTHER** [1962] 13 S.T.C. 1019 (All.).

Exemption certificate—Bullion merchant—Second application for exemption for 1949-50 made after expiry of 30 days from commencement of year—Exemption certificate—When should take effect.—Under section 4 of the U. P. Sales Tax Act, the State Government issued Notification No. S.T. 118/X-928-48 dated the 7th June, 1948, by virtue of which dealers in bullion and specie were exempted from sales tax on condition that they obtained an exemption certificate from the appropriate authority after payment of the appropriate fee. The applicant, a bullion merchant, paid the maximum fee and obtained an exemption certificate for the year 1948-49. For the year 1949-50 he made an application for exemption on 6th May, 1949, but the authority concerned granted him a certificate exempting him from sales tax only from the date of the application, *viz.*, from 6th May, 1949, and assessed him to sales tax upon his actual turnover for the period 1st April, 1949, to 5th May, 1949. The applicant contended that the certificate for exemption should enure for the whole year 1949-50 and that therefore he was not liable to pay the tax for the period 1st April, 1949, to 5th May, 1949: *Held*, on a construction of the rules framed under the Act, that as the second application was made after the expiry of thirty days from the commencement of the year 1949-50, it was not covered by rule 22; it must be treated as a fresh application under rule 19 to which the provisions of rule 19A would apply and therefore the exemption certificate granted to him would take effect not for the whole year but only for the period commencing from the date of the application till the expiry of the year: *Held further*, that the provision in the rules that if an application for exemption is made beyond time, the exemption should be granted not for the whole year but for the period commencing from the date of the making of the application till the expiry of the year is not inconsistent with Notification No. S.T. 118/X-928-48 dated the 7th June, 1948, issued by the State Government.—**GIRDHARI LAL v. SALES TAX OFFICER, ALLAHABAD** [1952] 3 S.T.C. 1 (All.).

Exemption certificate—Dealer in gold and silver bullion—When application should be made and fees should be paid.—The grant of an exemption certificate under section 4(2) of the Rajasthan Sales

Tax Act, 1954, before the end of the accounting year 1955-56 to a registered dealer carrying on the business in gold and silver bullion and ornaments, operated for the entire business transacted in that year and not from the date of the application, where the fee prescribed was not in relation to the turnover but a fixed annual sum. As no time-limit was prescribed for an application for the grant of an exemption certificate for the year 1955, an application therefor could be made at any time during the year. The date of the application or of the payment of the requisite fee could not limit the period of the exemption so as to restrict it to the remaining part of the assessment year. The sales tax imposed under the Act is an annual tax. Under rule 10 of the Rajasthan Sales Tax Rules, 1955, the exemption is expressly contemplated for an assessment year and not for the accounting year. *Mathra Parshad and Sons v. State of Punjab and Others* [1962] (13 S.T.C. 180; A.I.R. 1962 S.C. 745) followed. *Inder Singh v. Sales Tax Officer, City Circle, Jodhpur* [1961] (12 S.T.C. 557; 1961 R.L.W. 314) referred to.—*NATHMAL TARACHAND v. COMMISSIONER OF SALES TAX, RAJASTHAN* [1963] 14 S.T.C. 1000 (Raj.).

Exemption certificate—Excess turnover—Whether liable to fee only or taxable.—An exemption certificate issued for a particular year under rule 11(c) of the M. B. Sales Tax Rules, 1950, is valid not only for the quantum of turnover mentioned therein but also for any actual excess turnover in that year, and on the excess turnover the assessee is liable to pay only a fee at the rate of four annas per cent.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. DAULATRAM DULICHAND, RATLAM* [1967] 19 S.T.C. 502 (M.P.).

Exemption of contracts of sale entered into prior to certain date.—See page 421 *supra*.

—Contracts entered into before commencement of Punjab Act—"Contract" in section 4(1), proviso—Meaning of.—The word "contract" as used in the proviso to sub-section (1) of section 4 of the East Punjab General Sales Tax Act, 1948, means a contract as defined in the Indian Contract Act, 1872, and is not limited by the definition under clause (c) of section 2 of the East Punjab General Sales Tax Act, 1948.—*WAH STONE AND LIME QUARRY CO., PATHANKOT v. THE PUNJAB STATE* [1963] 14 S.T.C. 167 (Punj.).

Kalabattu—Manufacturer of silver wire—Whether manufacturer of kalabattu and entitled to exemption.—Under Notification No. ST-911/X dated 31st March, 1956, issued under section 4 of the U. P. Sales Tax Act, 1948, "*kalabattu* manufactured

in Uttar Pradesh when sold by the manufacturers thereof" was exempted from the payment of sales tax. The question was whether the petitioner, who was a manufacturer of fine silver wire, would be entitled to the exemption: *Held*, that *kalabattu* is gold or silver thread obtained by twisting gold or silver wire with silk or cotton thread and that a manufacturer of silver wire would not be included in the description of a manufacturer of *kalabattu*. While the burden is on the revenue authorities to show that a particular turnover is liable to tax, the onus of showing that a particular class of goods is exempt from taxation lies on the assessee. If the finding of the Sales Tax Officer could stand on the basis of the dictionary meaning and the entries in the assessee's own books, the mere fact that he might also have consulted some persons behind the back of the petitioner to reinforce the conclusion already arrived at by him would not vitiate that finding.—*KALIKA PRASAD HANUMAN DAS v. SALES TAX OFFICER, SECTOR II, VARANASI CIRCLE, VARANASI* [1963] 14 S.T.C. 88 (All.).

Notification exempting sales of copper, tin, nickel and zinc or any alloys containing any of these metals.—By a Notification dated 3rd August, 1948, which was published in the U. P. Gazette, the State Government exempted from sales tax sales of copper, tin, nickel and zinc or any alloy containing any of these metals only. A copy of this notification was forwarded by the State Government to the Commissioner of Sales Tax with the remark that small impurities up to one per cent. in metals or alloys thereof should be ignored for the purpose of granting exemption. The assessee sold to the railways phosphor bronze ingots containing 90.9 per cent. of copper, 6 to 8 per cent. of tin, 0.1 per cent. of lead and 0.4 per cent. of phosphorus. The Judge (Revisions) held that the sale was exempt from tax under the notification because lead and phosphorus in the ingots were impurities only. On a reference to the High Court of the question whether the sale of the phosphor bronze ingots by the assessee was taxable: *Held*, that the sale of phosphor bronze ingots did not fall within the ambit of the notification and was therefore taxable. *DESAI, C.J., and DWIVEDI, J.*—The direction forwarded to the Commissioner along with the notification had no force of law and the assessee could not claim exemption under it. The question whether the direction had the force of law or not was directly and necessarily involved in the question referred to the High Court and should accordingly be deemed to have been referred to the High Court. *DESAI, C.J.*—Even if the direction were to be placed on the

same footing as the notification, the claim to exemption was not justified at all because lead and phosphorus added to copper and tin could not be said to be impurities within the meaning of the direction.—COMMISSIONER, SALES TAX, UTTAR PRADESH *v.* HINDUSTAN METAL WORKS, HATHRAS [1964] 15 S.T.C. 97 (All.).

Interpretation of notification—Dealer importing and selling footwear—Whether entitled to claim exemption.—The respondent carrying on the business of importing and selling different types of footwear in the State of Madhya Pradesh was assessed to sales tax on his taxable turnover for the assessment year 1956-57 in accordance with item 32 of Schedule 3 of the notification dated 24th October, 1953, issued under section 5 of the Madhya Bharat Sales Tax Act, 1950. Although this item made all leather goods and all shoes, chappals, etc. liable to sales tax at the point of sale by the importer or manufacturer, an exemption was granted in respect of certain sales of footwear by means of a notification dated 28th January, 1956, which was as follows:—"In exercise of the powers conferred by section 4, sub-section (3), of the Madhya Bharat Sales Tax Act, Samvat 2007, the Rajpramukh in supersession of the Notification No. 59(c) (t) P. R. 412-54, dated 27th May, 1955, of this department has exempted from the payment of sales tax, in case of sale by the manufacturer or any member of his family, the sale of all such shoes, chappals, country shoes and footwears which are hand-made and which are not manufactured on power machine and whose sale price does not exceed Rs. 12-8-0". The respondent contended before the Sales Tax Officer that by virtue of this notification he was not liable to pay any sales tax on the sale of hand-made shoes, chappals and other types of footwear whose sale price did not exceed Rs. 12-8-0 per pair. The Sales Tax Officer held that as the respondent was an importer and dealer of footwear and not the manufacturer or a member of the family of the manufacturer, he was not entitled to claim exemption under the notification. The High Court allowed the claim of the respondent and quashed the assessment on the ground that the notification had to be read in consonance with the provisions of Article 304 of the Constitution and if so read, the exemption applied to hand-made shoes, chappals, etc., whether made within or outside State if the other conditions mentioned in the notification were satisfied. On appeal to the Supreme Court: *Held*, (1) that the notification dated 28th January, 1956, laid down three conditions for the grant of the exemption and all the three conditions must be fulfilled before the exemption could be claimed; (2) that the

expression "in the case of sale" in the exemption notification had no reference to a sale outside the State and the notification was not capable of the interpretation put on it by the High Court; (3) that the notification did not make any such discrimination between footwear manufactured or produced in the State of Madhya Pradesh and footwear imported from other States as was prohibited by Article 304(a) of the Constitution. The exemption was for the protection and benefit of small manufacturers who made hand-made shoes of small value and who might be unable to compete with large-scale manufacturers of footwear made on machines and such a classification was a valid classification; (4) that if the exemption notification was bad the respondent would be liable to sales tax on all footwear sold by him and would not be entitled to claim any exemption; (5) that the principle that where an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law are expressly exempted from taxation, renders the assessment invalid in toto, would not apply to the present case for the reason that there was no wrongful inclusion of any item in the assessment order.—THE STATE OF MADHYA PRADESH AND OTHERS *v.* ABDEALI [1962] 13 S.T.C. 931(S.C.).

Notification exempting earthwork, laterite, metal, sand, jelly and gravel quarrying contracts—Whether exemption extends to sale of those materials.—It could not be said that the words "quarrying contracts" in Notification No. 2786 dated 25th October, 1951, qualified only the word "gravel". The words qualified earthwork, laterite, metal, sand, jelly and gravel. Therefore what is exempted by the notification is quarrying contracts of those materials and not the out and out sale of those materials.—GOPALA MINES AND MINERAL WORKS *v.* THE STATE OF ANDHRA [1957] 8 S.T.C. 4 (A.P.).

Power of Government to amend schedule of exemptions.—*Per* S.R. DAS, C.J., VENKATARAMA AIYAR, S. K. DAS and SARKAR, J.J.—The power conferred on the State Government by section 6(2) of the C.P. and Berar Sales Tax Act, 1947, to amend the schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional. Moreover sub-sections (1) and (2) of section 6 together form integral parts of a single enactment, the object of which is to grant exemption from taxation in respect of such goods and to such extent as may from time to time be

determined by the State Government. Section 6(1), therefore, cannot have an operation independent of section 6(2), and an exemption granted thereunder is conditional and subject to any modification that might be issued under section 6(2). Sales to Government were exempted under item 33 in Schedule II to the Act as enacted by Act XVI of 1949, but this exemption was withdrawn by the Government by amending the Schedule by a notification dated 18th September, 1950. It was contended that the notification was *ultra vires* the Government: *Held*, that the notification was *intra vires* the Government and was not open to challenge.—PANDIT BANARSI DAS BHANOT AND OTHERS *v.* THE STATE OF MADHYA PRADESH AND OTHERS [1958] 9 S.T.C. 388 (S.C.).

Power of Government to grant exemption.—See GOVERNMENT *infra*.

Persons running tandoors, lohs and dhabas—Withdrawal of exemption retrospectively—Effect.—The effect of section 1(2) of the Punjab General Sales Tax (Amendment) Act (8 of 1962) was to withdraw the exemption granted by item 49 in Schedule B of the Punjab General Sales Tax Act, 1948, on and from 1st April, 1959, and make persons running tandoors, lohs and dhabas liable to sales tax at the taxable quantum of Rs. 25,000 from that date. The withdrawal of an exemption is not a case of making a second provision charging sales tax a second time. It is merely the revival of the charging provision which has remained dormant or ineffective while the exemption has been in operation. The Legislature can not only make a taxing statute imposing tax retrospectively, but it can withdraw an exemption already granted retrospectively. A deeming provision creates a statutory fiction and while such a statutory fiction is to be strictly construed, to the extent it is effective and clear, it must be given effect to. Under the Punjab General Sales Tax Act, 1948, the primary liability to pay sales tax is that of the dealer and the fact that section 6(1) says that the dealer may collect it from the consumer or the purchaser does not prevent the sales tax imposed on the dealer or the seller to be any the less sales tax on the sale of goods. Where before the right to assess an assessee had become barred by time under section 11(4) of the Punjab General Sales Tax Act, 1948, section 5 of the Punjab General Sales Tax (Amendment) Act, 1963, extended the period by another year: *Held*, that the extended period would apply to the assessment of the assessee. *Held*, further, that the period provided in section 11(4) was to be counted from the end of each quarter and not from any point in the middle of the quarter.

Sewak Hotel v. Excise and Taxation Officer, Bhatinda [1963] (14 S.T.C. 524) overruled.—BHAGWAN HOTEL *v.* THE ASSESSING AUTHORITY, ROHTAK, AND ANOTHER [1964] 15 S.T.C. 319 (Punj.).

—See also THE STATE OF PUNJAB AND ANOTHER *v.* SEWAK HOTEL, BHATINDA [1968] 21 S.T.C. 276 (Punj. & Har.) (page 320 *supra*).

Sales by Government and sales to Government.—Whether exempt.—See GOVERNMENT *infra*.

—Provision in U.P. Sales Tax Act, 1948, exempting Central and State Governments and All India Spinners Association and provisions authorising Government to exempt dealers and goods.—Whether discriminatory.—Whether whole Act void under Article 14.—FIRM JASWANT RAI JAI NARAIN *v.* SALES TAX OFFICER AND OTHERS [1955] 6 S.T.C. 386 (All.).

Sale of sugar and certain other articles other than stock of such goods remaining on certain date.—By section 5-A(1-A) of the General Sales Tax Act, 1925, the sale by a dealer of sugar and certain other specified commodities "other than stock of such goods in his possession, custody or control immediately before the 14th day of December, 1957," were exempted from taxation under section 3(1). Under section 5-A(4) the Government could compound for a consolidated payment, the tax that would be payable on the sale of the goods in the possession, control or custody of the dealer immediately before the 14th day of December, 1957. Where certain bags of sugar were despatched in pursuance of orders placed by the petitioner but they were booked in the name of the vendors and were in transit and the railway receipts had not been endorsed to the petitioner by the collecting bank at any time prior to 14th December, 1957: *Held*, (1) that the petitioner could not be considered as having been in "possession, custody or control" of the goods covered by the railway receipts prior to 14th December, 1957; (2) that the total purchase value of the goods was not merely the price at which the goods were purchased but included the freight and other incidental charges.—A. VELAYUDHAN NADAR *v.* THE STATE OF KERALA AND OTHERS [1960] 11 S.T.C. 373 (Ker.).

Sales by Halwais of articles ordinarily prepared by Halwais.—Item No. 50 in Schedule B to the East Punjab General Sales Tax Act, 1948, exempted "articles ordinarily prepared by Halwais, when sold by Halwais exclusively": *Held*, that the word "exclusively" goes with the word "Halwais" and what the item means is that when articles ordinarily prepared by Halwais are sold by Halwais they are exempt from sales tax

but when such articles are sold by persons other than Halwais they are not so exempt. A Halwai selling certain articles will therefore be exempt from sales tax under item No. 50 in regard to articles ordinarily prepared by Halwais and will be liable to sales tax in regard to other articles unless he can claim exemption with regard to any of them under any other item of the Schedule.—*SHIV RAM AND ANOTHER v. THE EXCISE AND TAXATION COMMISSIONER, PUNJAB* [1961] 12 S.T.C. 554 (Punj.).

Sale of tea grown on lands owned by assessee—Buyer entering into contract of sale with third parties and directing assessee to deliver tea outside State—Right to exemption.—The assessee, who were dealers in tea, sold to a company tea grown on the lands owned by them under an agreement of sale which fixed the price f.o.r. railway station in the Madras State and stipulated that the assessee should have the goods packed, marked and despatched to destinations, in accordance with the instructions which the company might give from time to time. The company then entered into contracts for sale of tea with various persons outside the Madras State and instructed the assessee to pack and send portions of the tea purchased by them to places where they had agreed to deliver to their own purchasers. The goods were accordingly consigned and despatched to destinations outside the State of Madras addressed to the company. The relevant railway receipts were also taken in the name of the company and delivered over to them. After the despatch of the goods the assessee issued an invoice to the company for the price and incidental charges and they were paid only thereafter. The assessee claimed that the sales were exempt under the provisions of section 5(v) of the Madras General Sales Tax Act, 1939, which provided as follows:—"The sale of tea grown by the seller or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be exempt from taxation under section 3, sub-section (1), if the sale is for delivery outside the State and delivery is actually so made." The Sales Tax Authorities and the Tribunal negatived the assessee's claim: *Held*, (1) that for the application of section 5(v) the question to be considered is not where the property passed to the buyer, but where the actual delivery was intended and was made. The circumstance that the company agreed to give delivery to their purchaser at a particular place would not exclude that place being the place of actual delivery contemplated by the contract entered into by the assessee with the company; (2) that it was not necessary that the intention to

deliver the goods outside the State of Madras should be expressed at the time of the contract itself. It would be enough, if at the time of the contract, the actual delivery was contemplated and the place of actual delivery was left to be determined at the option of one party or the other. As soon as that option was exercised by the concerned party, it should be held that both the parties intended to effect actual delivery at the place designated by the party having the option; (3) that in the present case there was such an option given to the company who subsequently exercised it and therefore deliveries were intended to be effected outside the State of Madras, and were so effected and the assessee would be entitled to the exemption claimed.—*STANES AMALGAMATED ESTATES LTD. v. STATE OF MADRAS* [1960] 11 S.T.C. 301 (Mad.).

Sale of gold ornaments when sold by manufacturer who charged separately for value of gold and cost of manufacture—"Manufacturer", meaning of—Merchants making gold ornaments not by paid employees but by independent artisans who were given raw materials and labour charges by merchants—Whether merchants manufacturers and entitled to exemption—Orissa Sales Tax Act (XIV of 1947)—Notification No. 8728 C.T.-66/49F dated 1st July, 1949, item 33.—J. SRIRANGAM BROTHERS AND OTHERS v. SALES TAX OFFICER, GANJAM CIRCLE, BERHAMPUR [1959] 10 S.T.C. 257 (Ori.).

Sale of goods actually in Cochin State.—In order to get the benefit of the exemption under Notification No. 1011 dated 28th May, 1949, the assessee has to prove that at the time he entered into the agreement to sell the goods within the State of Madras, the goods were actually in Cochin State. Where the assessee purchased cotton yarn in Cochin State and subsequently sold them in Madras State, but the assessee failed to furnish evidence that at the time he entered into the agreement to sell, the cotton yarn was actually in Cochin State: *Held*, that the assessee was not entitled to the benefit of the exemption under Notification No. 1011 and was liable as first dealer in yarn within the State of Madras to pay sales tax on the sales turnover.—*THE ALAGAPPA CORPORATION LIMITED v. THE STATE OF MADRAS* [1955] 6 S.T.C. 649 (Mad.).

Sweets—Dealers in confectionery other than confectionery sold in sealed containers—Scope of the exemption.—Clause (2) of the Notification No. S.T.-118/X-929-48 dated 7th June, 1948, issued by the Governor in exercise of the powers conferred by section 4 of the U.P. Sales Tax Act, 1948, exempted from sales tax "dealers in cooked food

(other than cooked food sold in sealed containers) including sweetmeats and other confectionery" on payment of a certain fee. The assessee was a firm carrying on the business of manufacture and sale of confectionery such as chocolates, lollipops, lemondrops etc. The assessee claimed exemption from sales tax under the notification and the case proceeded on the basis that as cooked food included sweetmeats and confectionery, only such sale of confectionery would fall out of the exemption clause where the confectionery was sold in sealed containers. It was found that the cardboard boxes in which the confectionery was kept had a lid which was not fastened or secured to the box by any label or seal and could be removed without breaking any seal or label. The whole box with the lid on was then wrapped up in cellophane paper whose ends at two sides were secured by pasting with some adhesive material. There was no seal or label of any kind pasted at the point where the ends of cellophane wrapping were secured: *Held*, that the turnover representing the sale of confectionery by the assessee was not the turnover of confectionery sold in sealed containers. A dealer carrying on the business of selling sweetmeats and confectionery on a comparatively smaller scale would find it uneconomical commercially to put the stuff sold or to be sold in sealed containers. It is only a large scale manufacturer who manufactures and exports the confectionery who would need sealing the same in a container and only such class of dealers are not intended to be exempted from the liability to pay sales tax on their turnover. When a class of persons are selected for enjoying a benefit conferred by the statute then the clauses in the statute providing any exception ought to be construed strictly so that the real intention of the statute conferring the benefit should be available to as large a class of persons as intended therein.—*K. P. BHARGAVA v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW* [1963] 14 S.T.C. 386 (All.) reversed in [1968] 21 S.T.C. 63 (S.C.). See page 420 *supra*.

Native State—Exemption of taxes granted to company by Ruler—Whether available after formation of Part B State—Right to levy sales tax on company under Madhya Bharat Sales Tax Act, 1950.—The respondent company was established in Gwalior State after an agreement with the Ruler of the then Gwalior State dated 7th April, 1947. By that agreement the Ruler agreed to exempt the respondent "from payment of all taxes and/or duties, in any form or nature whatsoever on its incomes, profits and gains of business, levied or to be hereinafter levied in the Gwalior State, or any part thereof, for a period of twelve years reckoned

from the date on which the factory or factories has or have started working or starts or start working." The Gwalior State merged thereafter in the United State of Madhya Bharat and when the Constitution came into force on 26th January, 1950, the United State of Madhya Bharat became the Part B State of Madhya Bharat. The question was whether by virtue of the agreement dated 7th April, 1947, it was not open to the State of Madhya Bharat or its officers to levy sales tax on the sales made by the respondent: *Held*, that the principle of the decision in *Union of India v. Gwalior Rayon Silk Manufacturing (Weaving) Company Limited* [1964] 53 I.T.R. 466 applied to Article 295(2) also under which the obligation in the present case devolved on the Part B State of Madhya Bharat. Therefore the legislative provisions made by the Madhya Bharat Sales Tax Act, 1950, or the Madhya Pradesh General Sales Tax Act, 1958, would prevail as against that agreement and the officers would have the power to levy sales tax on the sales made by the respondent. [The Court found it unnecessary to consider whether the exemption granted by the agreement would cover sales tax also.]—*GWALIOR RAYON SILK MANUFACTURING (WEAVING) CO. LTD. v. THE STATE OF MADHYA PRADESH AND OTHERS* [1964] 15 S.T.C. 791 (S.C.).

Packing materials used in sale of exempted goods—Liability to sales tax.—See *PACKING MATERIALS infra*.

Tax on persons with certain extent of business and exemption of others—Validity of provisions.—See *LALA GIAN CHAND AND OTHERS v. PUNJAB STATE AND OTHERS* [1957] 8 S.T.C. 646 (Punj.), *PITHAPURAM TALUK TOBACCO, CIGARS AND SODA MERCHANTS' UNION v. THE STATE OF ANDHRA PRADESH* [1958] 9 S.T.C. 723 (A.P.) and *Kilikar v. Sales Tax Officer* [1968] 21 S.T.C. 252 (Ker.) (pages 500 and 501 *supra*).

Notification exempting garments excluding hosiery products—Whether infringes Article 14, Constitution of India.—See *JAIPUR HOSIERY MILLS PRIVATE LTD. AND OTHERS v. STATE OF RAJASTHAN AND OTHERS* [1967] 19 S.T.C. 416 (Raj.) (page 502 *supra*).

Withdrawal of exemption granted to jaggery and gur by amending Schedule and simultaneous issue of notification granting exemption to palm jaggery—Validity—Whether discriminatory.—*K. SUBRAMANIA PILLAI AND OTHERS v. STATE OF MADRAS* [1969] 23 S.T.C. 359 (Mad.) affirmed by the Supreme Court, see 24 S.T.C. (page 502 *supra*).

Imposition of tax on purchase of sugarcane for use, consumption or sale in factory—Minimum price for sugarcane fixed by Government—Statute fixing zones for factory—Occupier of factory bound to accept cane offered by cane grower—Form of agreement prescribed by statute—Tax whether constitutional—Exemption of khandasari units and cane growers producing jaggery—Whether discrimination—Power to exempt new factories and factories which have substantially expanded—Whether discriminatory.—THE ANDHRA SUGARS LTD. AND ANOTHER v. THE STATE OF ANDHRA PRADESH AND OTHERS [1968] 21 S.T.C. 212 (S.C.) (page 502 *supra*).

EXPORT AND IMPORT

(See CONSTITUTION OF INDIA, page 328 *supra*, CENTRAL SALES TAX ACT, 1956, pages 206–209 *supra* and HIDES AND SKINS.)

FILMS

Producer of cinematograph films—Grant by way of lease “entire world negative rights” of film for 49 years—Nature of rights granted—Whether amounts to a sale of goods—Liability to sales tax—Raw film and exposed film—Whether different commodities.—The assessee, a producer of cinematograph films, obtained the copyright of a story in Hindi and on the basis of that story produced a cinematograph film. The assessee then entered into an agreement with a limited company, called the lessee, under which the assessee made over to the lessee the outright lease of the world negative rights of the film for a period of 49 years for a consideration amounting to the declared cost of production of the film plus 15 per cent. thereon as profit to the assessee, subject in any case to a minimum price of Rs. 10,00,000 payable by the lessee to the assessee. The agreement provided that as the lessee had undertaken unconditional liability to pay the basic price of Rs. 10,00,000, the lessee was entitled to hold until the expiry of the period of the lease the entire world negative rights without any lien thereon to the assessee. A clause in the agreement indicated the nature of the rights so given to the lessee as “the rights shall comprehensively include during and throughout the period of the lease all such rights and privileges as are given or reputed to be given by the proprietor of the world negative rights of a film to the sole and exclusive distributor of the world negative rights of the film.” The right of the assessee was limited only to the recovery of the unpaid consideration stipulated, and excluded any right on his part to get back or claim possession of the positive copies or copy of the negative.

Another clause in the agreement provided as follows:—“The positive prints of the film shall throughout the period of the lease be the property of the lessee and it agrees to use them only in the manner authorised, expressly or impliedly, by this agreement, and the lessee agrees to return at the determination of the lease to the producer all the concerned positive prints then remaining with it in their then condition. The negative of the film shall remain in the custody of the producer throughout the lease period exclusively as the agent and the custodian of the lessee free of any charge for keeping custody and it is expressly understood that the producer cannot during the continuance of this agreement make use of the negative in any manner whatsoever other than for the purpose of taking out extra prints as and when required by the lessee against its paying the producer the entire charges for such prints or supplying the requisite raw film and paying charges for taking the prints as the producer may ask at the time.” The Sales Tax Authorities held that though the transaction was described as a lease for 49 years, the assessee had effected a sale of the negative print of the picture for a consideration and therefore the transaction was liable to sales tax under the Madras General Sales Tax Act, 1959: *Held*, that even if copyright is regarded as a species of movable property, the transaction did not connote a sale at all and it was therefore not liable to sales tax. Where the turnovers relating to the abovesaid transactions were not being included in the returns of the assessee in the several years preceding the assessment year due to a decision of the Sales Tax Appellate Tribunal on that point, and the Sales Tax Authorities also did not, in the preceding years, insist upon the inclusion of such turnover in the returns, imposition of penalty under section 12(3), for failure to submit the return of that turnover in the assessment year, was not justifiable. An exposed film is in the light of the entries in the First Schedule to Act 1 of 1959 a different article from a raw film. It could not be said either on the basis of the report on which Act 1 of 1959 was passed or on the basis of the actual form which the legislation took with regard to films that an exposed film was not intended to be taxed solely for the reason that the raw film was liable to a single point levy. A power to penalise evasion of tax which is lawfully due is ancillary to the taxing power, and section 12(3) cannot therefore be struck down as unconstitutional. But, having regard to the underlying intent of the section, before imposing penalty under that section, it is necessary for the assessing authority to be

satisfied that the non-disclosure is wilful and is designed to evade the tax. The power to impose the penalty for non-disclosure of any part of the turnover is not a routine act on the part of the assessing authority but one which invites the exercise of a proper judicial discretion on his part. —*A. V. MEYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS, AND ANOTHER* [1967] 20 S.T.C. 115 (Mad.).

Film producers—Pictures produced not sold but were given for exhibition under certain financial arrangements—Purchase of raw films by producers—Whether producers dealers.—*K. S. FILMS v. THE STATE OF MAHARASHTRA* [1969] 23 S.T.C. 121 (Bom.).

—Distributor and producer of films—Supply of posters and publicity materials to producers—Entries in the accounts—Whether transaction sale—Whether distributor “dealer”—Liability to sales tax.—*RAJSHRI PICTURES PRIVATE LTD. v. THE STATE OF ANDHRA PRADESH* [1965] 16 S.T.C. 348 (A.P.).

—Dealer in cinematographic goods—Sale of used projector and negative of film after using it for some years—Liability to sales tax.—*PROJECTION OF INDIA PICTURES v. THE STATE OF MADRAS* [1965] 16 S.T.C. 357 (Mad.).

FIREWOOD

Exemption—Firewood—Timber—Manufacturer of agricultural implements—Purchase of babul wood—Whether purchase exempt as firewood under entry 19 of Schedule A or liable to tax as timber under entry 32 of Schedule C, Bombay Sales Tax Act (51 of 1959).—If a commodity which is commercially sold or purchased falls under any of the articles mentioned in Schedule A of the Bombay Sales Tax Act, 1959, the exemption will be immediately attracted, irrespective of what use is made or what the intention of the purchaser is. Under entry 19 in Schedule A of the Act purchases and sales of “firewood and charcoal” were completely exempt from tax; but under entry 32 of Schedule C purchases and sales of “timber (other than firewood) and bamboo whether whole or split” were liable to tax. The assessee manufacturing agricultural implements and parts for bullock-carts, purchased for that purpose babul wood consisting of the trunk, twigs and parts of the tree, all loaded in a cart, used the wood mostly and substantially in the manufacture of agricultural implements and sold the residue as firewood. It was found by the Tribunal that babul wood was extensively used both as timber and as firewood: *Held*, that as the entire tree which had fallen was sold as a

cartload to the assessee and as the commodity had not undergone the manufacturing process of chopping, which would reduce it to firewood by converting it into another commercial commodity, it could not be said that the assessee had purchased firewood. Therefore the assessee’s purchase of wood would not be covered by entry 19 of Schedule A but would be covered by entry 32 of Schedule C.—*THE STATE OF GUJARAT v. KESHAVLAL MANGUBHAI* [1968] 22 S.T.C. 271 (Guj.).

FIRM

Bogus firms—Whether firm bogus created for purposes of evasion of sales tax—Question of fact.—The question whether a firm is a bogus firm merely created by the assessee-firm for the purpose of evasion of sales tax is primarily a question of fact. *Held*, on the facts of the case, that the finding of the Sales Tax Authorities that a firm was a bogus firm created by the assessee-firm for the purpose of evasion of sales tax was supported by sufficient material.—*BHIMRAJ NAGARMAL v. STATE OF BIHAR* [1954] 5 S.T.C. 312 (Pat.).

Dissolution—Assessment on firm after dissolution—Whether permissible in the absence of specific provision—Whether firm a legal entity.—The respondent-firm was dissolved on July 11, 1953, and an intimation of the dissolution was sent to the department under section 16 of the East Punjab General Sales Tax Act, 1948, on July 18, 1953. In the meantime, on May 30, 1953, the firm had been assessed to sales tax in respect of its turnover for the period October 4, 1952, to March 31, 1953. That assessment was quashed and the Sales Tax Officer made a fresh assessment on that turnover on September 3, 1955. At the relevant time there was no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution: *Held*, that, as admittedly the firm was dissolved before the order of assessment was made, the order of assessment dated September 3, 1955, was bad. Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity, and on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence. There cannot be a distinction on principle between an assessment made on a firm under a proceeding initiated before its dissolution and one made in a proceeding started after the dissolution. In either case,

unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity. Section 16 of the East Punjab General Sales Tax Act, 1948, does not state that the dealer, if it happens to be a firm, continues to have legal existence even if it has ceased to be a firm. Nor does it permit a necessary implication to that effect. It is enacted for administrative purposes so that the appropriate authority may take the necessary action. Rule 40 of the East Punjab General Sales Tax Rules, 1949, which only imposes a joint and several liability on the dealer and its partners for the payment of tax, penalty or any amount due under the Act or the Rules, does not provide for a case of the dissolution of a firm and the assessment of the dissolved firm. *Jagat Behari Tandon v. Sales Tax Officer, Etawah* [1955] (6 S.T.C. 125); *Lalji v. Assistant Commissioner, Sales Tax, Raipur* [1958] (9 S.T.C. 571); *In re R. D. Fernandes* [1957] (8 S.T.C. 365); *Khushi Ram Behari Lal and Co. v. Assessing Authority, Sangrur* [1964] (15 S.T.C. 165); *Ponnuswami Gramani v. Collector of Chingleput* [1960] (11 S.T.C. 80) and *Bankatlal Badruka v. State of Bombay* [1961] (12 S.T.C. 405) overruled. Reasoning in *Commissioner of Sales Tax v. Aurobindo Auto Service* [1963] (14 S.T.C. 46) disapproved. *C. A. Abraham v. Income-tax Officer, Kottayam* [1961] (41 I.T.R. 425) (S.C.) and *Commissioner of Income-tax v. Angidi Chettiar* [1962] (44 I.T.R. 739) (S.C.) referred to. Decision of the Punjab High Court in *Jullundur Vegetable Syndicate v. The Punjab State* [1962] (13 S.T.C. 251) affirmed.—*THE STATE OF PUNJAB v. JULLUNDUR VEGETABLES SYNDICATE* [1966] 17 S.T.C. 326 (S.C.).

—*Assessment on firm after dissolution—Legality.*—While there is no provision in the Punjab General Sales Tax Act, 1948, for making an assessment on a firm after its dissolution no valid assessment order can be made on the firm if the dissolution takes place before the order of assessment is made. An assessment on a dissolved firm, whether proceedings are initiated before or after the firm is dissolved, is therefore unsustainable. Decision of the Punjab High Court in *Khushi Ram Behari Lal & Co. v. The Assessing Authority, Sangrur, and Another* [1964] (15 S.T.C. 165) reversed. *The State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326; A.I.R. 1966 S.C. 1295) followed.—*KHUSHI RAM BEHARI LAL & Co. v. THE ASSESSING AUTHORITY, SANGRUR, AND ANOTHER* [1967] 19 S.T.C. 381 (S.C.).

—*Assessment of firm after dissolution in the absence of specific provision—Legality—Whether firm a legal entity—Res judicata—Principle binds*

only parties and privies—Decision of High Court on petition by one partner challenging assessment—Whether binds another partner—Constitution of India, Article 226.—Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity, and on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence. There cannot also be a distinction in principle between an assessment made on a firm under a proceeding initiated before its dissolution and one made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity. The principle of the doctrine of *res judicata* is that judgments and decrees bind only parties and privies. To make a person a privy he must have acquired an interest in the subject-matter of action by inheritance, succession or purchase subsequent to the action or he must hold the property subordinately, i.e., as a sub-lessee. After the dissolution of a partnership there is no agency as between the partners and therefore a decision of the High Court in a previous writ petition filed by one partner of the dissolved firm challenging the assessment [*Lalji v. The Assistant Commissioner of Sales Tax, Raipur* [1958] (9 S.T.C. 571)] could not bind another partner of that firm. *Ghanshyamdas v. Sales Tax Officer* [1964] (15 S.T.C. 128; A.I.R. 1964 M.P. 161) and *Lalji v. The Assistant Commissioner of Sales Tax, Raipur* [1958] (9 S.T.C. 571) overruled. *State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326; A.I.R. 1966 S.C. 1295; [1966] 2 S.C.R. 457) followed. *Devilal Modi v. Sales Tax Officer, Ratlam, and Others* [1965] (16 S.T.C. 303; A.I.R. 1965 S.C. 1150) referred to.—*ADDITIONAL TAHSILDAR, RAIPUR, AND OTHERS v. GENDALAL* [1968] 21 S.T.C. 263 (S.C.).

—*The decisions of the High Courts before and after the above decisions of the Supreme Court are given below in their chronological order:—*

—*Whether assessment can be made on firm after dissolution and tax recovered from previous partners.*—Under the U. P. Sales Tax Act, 1948, an order of assessment can be passed on a firm after it has been dissolved and the tax can be recovered, after the dissolution of the firm, from the partners who were the partners in the firm during the period for which the tax has been assessed. The

fact that a firm comes within the definition of the word "dealer" does not by itself go to show that the partners of the firm cease to be dealers as defined in the Act. If a partner is carrying on a trade by himself, he would clearly be included within the definition and, if two of them join together and give their concern a composite name, it does not mean that they cease to be dealers themselves. The mere absence of a provision in the U. P. Sales Tax Act like the one in section 44 of the Indian Income-tax Act, 1922, does not lead to the necessary conclusion that after the discontinuance of the firm, the partners of that firm cannot be taxed or that the tax cannot be recovered from them.—*JAGAT BEHARI TANDON v. THE SALES TAX OFFICER, ETAWAH AND ANOTHER* [1955] 6 S.T.C. 125 (All.). On appeal this decision was reversed. See below.

—An assessment order cannot be made under the U. P. Sales Tax Act, 1948, on a firm after it is dissolved and has discontinued business as the firm as a unit of assessment has ceased to exist. Under the U. P. Sales Tax Act a firm is a separate unit of assessment and to this extent it is distinguishable from its partners. *Jagat Behari Tandon v. Sales Tax Officer, Etawah, and Another* [1955] (6 S.T.C. 125) reversed.—*JAGAT BEHARI TANDON AND ANOTHER v. SALES TAX OFFICER, ETAWAH, AND ANOTHER* [1957] 8 S.T.C. 459 (All.).

—*Subsequent assessment of partner—Legality.*—Under the Madras General Sales Tax Act a firm is a "dealer" and therefore in respect of a transaction done by a firm, which was in existence during the assessment year but was dissolved subsequently, it is the firm that is to be assessed to tax and not any of its partners in their individual capacity. There is an essential distinction between an assessment and the mode of realisation. Rule 19 is intended to apply only to cases of subsequent partnerships.—*THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, GUNTUR DIVISION, GUNTUR v. K. BAKTHAVATSALAM NAIDU* [1955] 6 S.T.C. 657 (Andh.).

—*Proceedings against partners for tax due from firm.*—Sales tax, which is a State debt, will be recoverable from and out of the partnership assets even after dissolution of the firm and in the hands of the partners or otherwise.—*R. D. FERNANDES, In re* [1957] 8 S.T.C. 365 (Mad.).

—*Validity of assessment after dissolution in the absence of notice under section 17, C. P. and Berar Act—Realisation of arrears of tax—Whether partners personally liable.*—A firm or a partnership is a "dealer" as defined in section 2(c) of the C. P. and Berar Sales Tax Act, 1947. For the purposes

of sales tax a firm, which is a dealer registered under the Act, continues to be liable to assessment so long as any change effected in the name or nature of the business is not intimated to the prescribed authority under section 17. The fact that in reply to the notices of demand issued by the Sales Tax Officer, a partner of the firm disclosed that the firm was dissolved, did not affect the power of the taxing authorities to assess the tax on the firm as a registered dealer in the absence of any action under section 17. Where the department only assessed the firm, the arrears of tax are, in the first instance, recoverable from its assets. Until the assets are realised or cannot be found, the action of the taxing authorities to try to realise the amounts of tax from the partners personally is premature. *Quære.*—Whether the partners would be personally liable for the balance remaining due.—*LALJI v. THE ASSISTANT COMMISSIONER, SALES TAX, RAIPUR* [1958] 9 S.T.C. 571 (M.P.).

—*No proper proof—Assessment on firm—Legality.*—In the absence of compliance with rule 37 framed under the Mysore Sales Tax Act, 1948, and in the absence of proper proof of dissolution of the assessee-firm prior to the date of assessment, an assessee could not complain that the order of assessment was invalid since it was made after dissolution of the assessee-firm.—*THE STATE OF MYSORE v. N. A. SARAVATHULLA AND CO. AND ANOTHER* [1958] 9 S.T.C. 593 (Mys.).

—*Assessment of firm after dissolution—Legality.*—Although the Madras General Sales Tax Act, 1939, and the Rules framed thereunder make no separate provision for assessing the turnover of or for the recovery of taxes due by, a dissolved firm, the firm being a dealer as defined in section 2(b) up to the date of its dissolution, could be assessed to sales tax even after its dissolution and the tax could be recovered from the partners of the dissolved firm.—*R. PONNUSWAMI GRAMANI v. THE COLLECTOR OF CHINGLEPUT DISTRICT AND OTHERS* [1960] 11 S.T.C. 80 (Mad.).

—*Failure to give notice regarding dissolution—Assessment of partner—Legality.*—Where a firm is dissolved or discontinues its business, the department is entitled to assess the firm under the Hyderabad General Sales Tax Act, 1950, on the basis that it continues to exist and to do business unless and until the department is informed, as required by the provisions of the Rules, about the dissolution or discontinuance. As the firm can be assessed to tax, a notice can be issued on a partner of that firm as well.—*JAI DAYAL v. DEPUTY COMMERCIAL TAX OFFICER, OSMANGANJ* [1960] 11 S.T.C. 782 (A.P.).

—*Whether business is carried on by firm or by partner in his individual capacity—Question of fact.*

—The question whether a business was carried on by a partnership or whether the firm was dissolved and the business was thereafter carried on by a partner of the firm in his individual capacity is essentially a question of fact. To decide such a question the income-tax assessment order may be a relevant piece of evidence but it is open to the Sales Tax Authorities to take a view different from that taken by the Income-tax authorities.—*FAZL BHAI DHALA & Co. v. COLLECTOR OF SALES TAX, ORISSA* [1961] 12 S.T.C. 216 (Ori.).

—*No intimation to officer regarding dissolution—Assessment to tax after dissolution—Legality.*—A firm in which the petitioners were partners was assessed to sales tax after its dissolution for the period during which it carried on business. The assessment proceedings were however started long before the firm was dissolved and no intimation regarding its dissolution as required by rule 35 of the Hyderabad General Sales Tax Rules, 1950, was given to the Sales Tax Officer. It was contended on behalf of the petitioners that the jurisdiction of the officer to assess the firm ceased as soon as the firm was dissolved: *Held*, that the firm was liable to pay tax in respect of the business carried on by it and as the assessment proceedings were started long before its dissolution it could not be said that the officer acted wrongly or without jurisdiction in continuing the assessment proceedings and passing final orders thereon. *Lalji v. Assistant Commissioner, Sales Tax, Raipur* [1958] (9 S.T.C. 571) and *R. Ponnuswami Gramani v. The Collector of Chingleput District* [1960] (11 S.T.C. 80) relied on.—*BANKATLAL BADRUKA AND OTHERS v. THE STATE OF BOMBAY AND OTHERS* [1961] 12 S.T.C. 405 (Bom.).

—*Assessment of firm after dissolution.*—A partnership firm which was a registered dealer under the provisions of the East Punjab General Sales Tax Act, 1948, and which was in existence throughout the period for which assessment of sales tax had to be made was not liable to the said assessment if it had been dissolved before the proceedings for assessment were initiated. The information which is to be furnished under section 16 regarding the discontinuance of the business of the firm is only for administrative purposes such as cancellation or amendment of the certificate of registration, and the default in giving such information makes the person responsible for default liable to penalty under clause (h) of section 23(1). It has no connection with the liability to assessment. Case law discussed.—*JULLUNDUR VEGETABLE SYNDICATE v. THE PUNJAB STATE*

[1962] 13 S.T.C. 251 (Punj.) (F.B.) affirmed in [1966] 17 S.T.C. 326 (S.C.).

—*Whether assessment can be made on firm dissolved prior to coming into force of U.P. Act.*—In view of section 1(2) and section 4 of the U.P. Sales Tax (Amendment) Act (XV of 1961) read with the proviso to section 1 of U.P. Sales Tax (Second Amendment) Act (XXXII of 1957) an assessment can be made on a firm which has been dissolved before the coming into force of the U.P. Sales Tax (Second Amendment) Act, 1957. The U.P. Sales Tax (Amendment) Act (XV of 1961) is not *ultra vires* on the ground that it makes it possible to assess a firm dissolved prior to the 30th November, 1957. *Jagat Behari Tandon v. The State* [1957] (8 S.T.C. 459; 1957 A.L.J. 77) referred to.—*RAM KUMAR RAM CHANDRA & Co. v. THE SALES TAX OFFICER III, KANPUR* [1962] 13 S.T.C. 305 (All.).

—*Assessment on firm after dissolution.*—The effect of rules 19 and 20 of the Madras General Sales Tax Rules, 1939, is that notwithstanding the dissolution of a partnership, the responsibility for the tax is joint and several on every partner. An assessment made in the name of the partnership, even though it may be dissolved, has only the effect of an assessment made on each and every one of the individual partners, as the firm, though an assessable entity, is not a legal entity and must be regarded as representing in a compendious fashion all the partners of the partnership. Where a firm was dissolved on 9th February, 1954, and a notice was sent to the taxing authorities on 15th February, 1954, stating that the firm had ceased to do business, but the firm was assessed to tax for the year 1953-54 on 20th March, 1957, and a notice of demand was served on the assessee, one of the erstwhile partners of the firm, on 6th April, 1957: *Held*, that the assessment was valid and the tax could be recovered from the assessee.—*VEERABADRA KONAR v. STATE OF MADRAS* [1962] 13 S.T.C. 556 (Mad.).

—*Assessment after dissolution—Legality.*—If a partnership firm was in existence during the assessment year, the partners of the firm are clearly liable to pay the sales tax in respect of the turnover of that firm and they cannot repudiate that liability on the ground that at the time the assessment is made the partnership has disappeared by reason of its dissolution.—*VEERAPPA NINGAPPA SANAKAL OF MUNAVALLI AND OTHERS v. THE MYSORE STATE* [1962] 13 S.T.C. 796 (Mys.).

—*Assessment of firm after dissolution and notice of demand served on erstwhile partner—Legality.*—

Where a partnership was dissolved and the business was closed down but no notice of dissolution was given to the Sales Tax Authorities as required by section 18(b) of the Act read with rule 14 of the Orissa Sales Tax Rules, 1947, and the Sales Tax Authorities, in respect of periods preceding the dissolution of the partnership and the discontinuance of the business, continued the assessment in the name of the firm and served demand notice on one of the partners: *Held*, that the expression "liable to assessment" in section 19(3) of the Act must be given the widest connotation so as to include the whole process of assessment and that the assessment proceedings might be continued as if the partnership had not been dissolved. Therefore the notice issued in the partnership's name and served on one of its partners after the dissolution of the partnership was not illegal. *Mela Ram & Sons v. Commissioner of Income-tax, Punjab* [1956] (29 I.T.R. 607; A.I.R. 1956 S.C. 367) and *Commissioner of Sales Tax, Orissa v. Ramakaran Agarwalla* [1962] (13 S.T.C. 407) followed.—*COMMISSIONER OF SALES TAX, ORISSA v. AUROBINDO AUTO SERVICE* [1963] 14 S.T.C. 46 (Ori.).

—*Initiation of assessment proceedings long before dissolution.*—The mere omission of the words "firm, association" etc. by Act X of 1954 from the opening portion of the definition of the word "dealer" in section 2(d) of the East Punjab General Sales Tax Act, 1948, brought about no change in the law. A firm which is registered as a dealer is treated for the purpose of assessment to sales tax as a separate entity. A firm was in existence and actually did business during the period for which assessment was made and proceedings were initiated long before the dissolution of the firm. No formal intimation relating to the dissolution of the firm as required under section 16 was given to the prescribed authority and intimation of the dissolution was given only by the counsel during one of the hearings before the final assessment order was passed: *Held*, (1) that the Full Bench decision in *Jullundur Vegetable Syndicate v. The Punjab State* [1962] (13 S.T.C. 251) had no application to the present case; (2) that in view of the fact that no intimation was given about the dissolution of the firm as required under the Act and the Rules, the firm continued to be liable to be assessed and that in any case proceedings having been initiated long before the actual dissolution, order of assessment could properly be made notwithstanding the subsequent dissolution of the firm.—*KHUSHI RAM BEHARI LAL & Co. v. THE ASSESSING AUTHORITY, SANGRUR, AND ANOTHER* [1964] 15 S.T.C. 165 (Punj.) reversed in [1967] 19 S.T.C. 381 (S.C.).

—*Assessment on firm after dissolution—Whether permissible in the absence of specific provision.*—The provisions of the Punjab General Sales Tax (Amendment) Act (2 of 1963) are not retrospective. Under the Punjab General Sales Tax Act, 1948, before its amendment by Act 2 of 1963, no assessment can be made on a firm which has lost its character as an assessable entity before the actual order of assessment is made. *Bishan Dial Hans Raj v. The State of Punjab* (C.W. No. 483 of 1963 decided on 20th April, 1965) and *State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326) followed. *Jullundur Vegetable Syndicate v. The Punjab State* [1962] (13 S.T.C. 251; 64 P.L.R. 351) referred to.—*HARJAS MAL DILA RAM v. THE EXCISE AND TAXATION OFFICER, BHATINDA, AND ANOTHER* [1966] 18 S.T.C. 354 (Punj.).

—*Assessment on firm after dissolution—Provisions of section 18, Punjab General Sales Tax Act (46 of 1948)—Whether retrospective in operation.*—Section 18 of the East Punjab General Sales Tax Act, 1948, inserted in the Act by the Punjab General Sales Tax (Amendment) Act (2 of 1963) cannot be given retrospective effect. The language of section 18 is in such terms that it is not possible to read any retrospectivity in it. The use of the present tense in the opening part of sub-section (1) shows that the intention was to enact the provision prospectively and not retrospectively. *State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326) followed.—*MADAN MOHAN AND ANOTHER v. THE DISTRICT EXCISE AND TAXATION OFFICER AND ASSESSING AUTHORITY, BHATINDA, AND ANOTHER* [1966] 18 S.T.C. 364 (Punj.).

—*Assessment of dissolved firm in respect of turnover before dissolution—Legality.*—Under the Punjab General Sales Tax Act, 1948, a firm, which was dissolved in April, 1962, could not be assessed to sales tax after its dissolution in respect of its turnover before dissolution. *The State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326) followed.—*MOTI RAM KISHORE CHAND v. DISTRICT EXCISE AND TAXATION OFFICER (ASSESSING AUTHORITY), BHATINDA, AND OTHERS* [1968] 21 S.T.C. 459 (Punj. and Har.).

—*Whether firm is dissolved—Question of fact—Method of assessment.*—The question whether a firm is or is not dissolved is a question of fact and it is not within the province of the High Court to go into that question. If a firm stood dissolved on 15th April, 1958, an assessment in respect of the turnover of the firm for the period 15th May, 1957, to 15th April, 1958, should be made under section 9(3)(b) of the Rajasthan Sales Tax Act, 1954, as amended by the Rajasthan Taxation

Laws (Amendment) Act (13 of 1964).—*SMT. SHANTI BAI v. STATE AND OTHERS* [1968] 21 S.T.C. 458 (Raj.).

—*Assessment of firm after dissolution—Legality—Proper procedure—Alternative remedies.*—Though under the partnership law a firm is not a legal entity yet for tax law, such as income-tax as well as sales tax, it is a legal entity. On dissolution, the firm ceases to be a legal entity and thereafter in the absence of any statutory provision permitting the assessment of a dissolved firm, there can be no scope for assessing the firm which has ceased to have a legal existence. There is no distinction on principle between an assessment made on a firm under a proceeding initiated before the dissolution and that made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity. Where a firm stood dissolved in 1956, an assessment in respect of the turnover prior to its dissolution should be made under section 9(3)(b) of the Rajasthan Sales Tax Act, 1954, as amended by the Rajasthan Taxation Laws (Amendment) Act, 1964. Where there is a total lack of jurisdiction in the Sales Tax Authorities, then the mere existence of an alternative remedy under the Sales Tax Act by itself is no ground for not granting relief under Article 226 of the Constitution. *Smt. Shanti Bai v. State of Rajasthan and Others* [1968] (21 S.T.C. 458) and *The State of Punjab v. Jullundur Vegetables Syndicate* [1966] (17 S.T.C. 326) followed.—*MST. JEEYAKANWAR AND OTHERS v. STATE OF RAJASTHAN AND OTHERS* [1968] 21 S.T.C. 461 (Raj.).

—*Notice to managing partner—Whether sufficient—Dissolution—No intimation of dissolution given to sales tax authorities—Notices served on partner in charge of affairs of firm—Other partners of dissolved firm whether can claim assessment to be void.*—After the introduction of section 15-B in the Andhra Pradesh General Sales Tax Act, 1957, which is deemed always to have been inserted in the Act, an assessment on a dissolved firm and the recovery of tax in pursuance of such an assessment is good in law. In the case of a partnership, notice under the Andhra Pradesh General Sales Tax Act, 1957, need be given only to the managing partner or the partner who is in charge of the affairs of the firm, except where the firm is dissolved and the fact of dissolution is intimated to the authorities. Where, in respect of certain assessments, the dealer at all material times was a firm, the returns were submitted by the partner in charge of the affairs of the firm, and in the course of the proceedings notices were

served on him, he made representations at the stages of assessments, first appeals and second appeals, and there was no satisfactory evidence to show that the authorities were informed that the firm was dissolved: *Held*, that another partner could not claim that the assessments were void because no separate notice was served on him although he had severed his connection with the firm.—*KISHANLAL OIL MILLS (BY ITS PARTNER MOHANLAL) v. STATE OF ANDHRA PRADESH AND ANOTHER* [1969] 24 S.T.C. 304 (A.P.).

—Where a managing partner of a firm had been served with a notice under section 14(1) of the Andhra Pradesh General Sales Tax Act, 1957, but no separate notices had been issued to the petitioner, who was one of the partners, and the managing partner had submitted the returns and contested the assessment proceedings before the assessing authority by producing the relevant records and by filing written objections, the contention that under section 14(1) of the Act, notice should have been given not only to the managing partner of the firm but to every one of the partners of the firm after its dissolution, was unsustainable. In the case of a partnership firm, notice under the Andhra Pradesh General Sales Tax Act need be given only to the managing partner or the partner who is in charge of the affairs of the firm, except where a firm is dissolved and the fact of dissolution is intimated to the authorities.—*GOPALAKRISHNAN NAIR, J., in Writ Petitions Nos. 276 and 350 of 1964 quoted in KISHANLAL OIL MILLS v. STATE OF ANDHRA PRADESH AND ANOTHER* [1969] 24 S.T.C. 304 at p. 316 (A.P.).

Firm—Whether dealer.—A firm or a partnership is a “dealer” as defined in section 2(c) of the C.P. and Berar Sales Tax Act, 1947.—*LALJI v. THE ASSISTANT COMMISSIONER OF SALES TAX, RAIPUR* [1958] 9 S.T.C. 571 (M.P.).

—A partnership firm would be included in the definition of the word “dealer” in the Bombay Sales Tax Act, 1946, and the Bombay Sales Tax Ordinance, 1952.—*STATE v. R. M. SHAH & Co.* [1958] 9 S.T.C. 683 (Bom.).

—Under the U.P. Sales Tax Act, 1948, a firm is a separate unit of assessment and to this extent it is distinguishable from its partners.—*JAGAT BEHARI TANDON AND ANOTHER v. SALES TAX OFFICER, ETAWAH, AND ANOTHER* [1957] 8 S.T.C. 459 (All.).

—Under the Madras General Sales Tax Act a firm is a dealer.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. K. BAKTHAVATSALAM NAIDU* [1955] 6 S.T.C. 657 (Andh.).

—*Whether two firms were separate and distinct—Finding of fact.*—A finding of the Appellate Tribunal on the materials placed before it that two firms were separate and distinct is a finding of fact.—*M. V. BHADRAIAH SETTI v. THE STATE OF ANDHRA* [1959] 10 S.T.C. 222 (A.P.).

—*Whether included in the word "person" in G. O. No. 402 dated 2nd July, 1954, issued by Andhra Government.*—*THE STATE OF ANDHRA PRADESH v. BAYYA SUBBA RAO & COMPANY, GUDIVADA* [1960] 11 S.T.C. 545 (A.P.).

—*Whether a legal entity.*—Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax law as well as sales tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity, and on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence.—*THE STATE OF PUNJAB v. JULLUNDUR VEGETABLES SYNDICATE* [1966] 17 S.T.C. 326 (S.C.) and *ADDITIONAL TAHSILDAR, RAIPUR, AND OTHERS v. GENDALAL* [1968] 21 S.T.C. 263 (S.C.).

—See also *MST. JEEYAKANWAR AND OTHERS v. STATE OF RAJASTHAN AND OTHERS* [1968] 21 S.T.C. 461 (Raj.).

—*Whether legal entity.*—A firm is an assessable entity in the sense that the expression "dealer" is defined so as to include a firm. But notwithstanding that position, a firm is not a legal entity and is recognised to be merely a compendious form of expression to indicate a group of persons associated in partnership. Though for purposes of convenience an assessment is made in the firm's name, it is nevertheless an assessment which is enforceable against each and every member of the firm.—*VEERABADRA KONAR v. STATE OF MADRAS* [1962] 13 S.T.C. 556 (Mad.).

—A partnership firm is not for the purpose of the Bombay Sales Tax Act, 1953, a unit upon which an assessment can be made. The partners of a firm, if the firm is the dealer upon which the assessment is made, are no more than a group of persons carrying on the business in a convenient way under the name and style assigned to the partnership firm. The dealer in a case where the turnover is of a partnership firm is really that group of persons each of whom is jointly and severally liable to pay the tax in respect of the turnover of the firm. The Sales Tax Act does not recognise the partnership as a distinct entity for the purposes of assessment, and if under its provisions an assessment is made upon the firm

that assessment is no other than an assessment made upon the collective body of persons composed of its partners.—*VEERAPPA NINGAPPA SANAKAL OF MUNAVALLI v. MYSORE STATE* [1962] 13 S.T.C. 796 (Mys.).

—A partnership has no existence distinct and independent of the members composing it. The name under which a firm carries on business is in point of law a conventional name applicable to the persons who are members of the firm. Therefore the head office and branch office of a firm are one and the same entity. Where the assessee, a partnership firm purchased cotton for export outside India and actually exported it outside India, the mere fact that the branch office of the assessee in Punjab made the purchases and the head office at Bombay exported it outside India would not disentitle the assessee to claim the exemption under section 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948.—*INTERNATIONAL COTTON (WASTE) CORPORATION, BOMBAY v. THE ASSESSING AUTHORITY, BHATINDA, AND OTHERS* [1965] 16 S.T.C. 1045 (Punj.).

Arrears of sales tax—Arrears due from firm or partner thereof—Recovery by seizure of movables of another firm in which such partner is also a partner.—*K. O. MOHAMED SULAIMAN & Co. v. STATE OF MADRAS* [1965] 16 S.T.C. 571 (Mad.) (page 64 *supra*).

—Arrears due from firm—Arrest of son of partner—Legality—Arrears due from Hindu undivided family—Arrest of member of family—Legality.—*S. UJJAL SINGH v. THE EXCISE AND TAXATION OFFICER, AMRITSAR* [1967] 20 S.T.C. 35 (Punj. & Har.) (page 64 *supra*).

—Two firms having one common partner—Arrears of tax in respect of one firm—Whether can be recovered from the other firm—Remedy of the department.—*CENTRAL GLASS FACTORY (MADRAS) FIRM v. SPECIAL COMMERCIAL TAX OFFICER, NON-RESIDENT CIRCLE, HYDERABAD, AND ANOTHER* [1967] 20 S.T.C. 69 (A.P.) (page 64 *supra*).

Formation of partnership—Duty of partner to report to assessing authority.—Rule 19 of the Andhra Pradesh General Sales Tax Rules, 1957, which imposes an obligation on a partner to report to the assessing authority the fact of his being a partner, is conceived in the interests of the department, so that they may have all information regarding the constitution of the partnership. That rule is not intended to benefit a partner and has not the effect of absolving a partner, who fails to report to the assessing authority the fact of his being a member of the partnership, of all the

responsibilities and liabilities of a partner. *Shankarlal Karva v. The Tahsildar, Karimnagar, and Others* [1958] (9 S.T.C. 246) distinguished.—*SARNAM SATYANARAYANA v. DEPUTY COMMERCIAL TAX OFFICER, GUNTUR-2* [1961] 12 S.T.C. 223 (A.P.).

Notice—Firm—Service of notice in Form XV, Bihar Sales Tax Rules, 1949—Whether in accordance with law.—*JUGAL KISHORE RAMGOPAL v. THE STATE OF BIHAR* [1955] 6 S.T.C. 272 (Pat.).

—Where the office peon took the forms and assessment order to the applicant (a partner of the firm), who after perusing them asked the peon to deliver them at his office and the peon made them over to the firm's office manager or agent: *Held*, that this procedure was in full accord with rule 77 framed by the Government under the Act regarding modes of service, and no exception could be taken to it.—*HIRA LAL v. THE STATE* [1955] 6 S.T.C. 662 (All.).

—*Assessment order sent by registered post received by relation of managing partner—Whether proper service—Presumption.*—Where copies of assessment orders were sent to the petitioner-firm by post under registered cover by the Sales Tax Officer and the registered cover was delivered to one S who, it was said, was a relation of the managing partner but was neither a member of the staff nor had anything to do with the business of the partner: *Held*, that pursuant to the presumption raised by section 27 of the U.P. General Clauses Act, 1904, the registered envelope must be deemed to have been delivered to the petitioner on the date on which it was delivered to S. *Held further*, that the presumption raised by section 27 is a presumption of fact and open to rebuttal.—*BHARAT GLASS FACTORY v. SALES TAX OFFICER II, ALLAHABAD, AND OTHERS* [1968] 21 S.T.C. 445 (All.).

—**Firm—Service of notice by ordinary post—Denial of receipt—Reminder received by partner but taken back by Sales Tax Officer—Whether service of notice proper—Validity of assessment**—*Bombay Sales Tax Rules, 1946, rule 51—Indian Evidence Act, sec. 114.*—*ADDY PHARMACY v. THE STATE OF BOMBAY* [1956] 7 S.T.C. 340.

—See also *KISHANLAL OIL MILLS v. STATE OF ANDHRA PRADESH* [1969] 24 S.T.C. 304 (A.P.) and the Cases below.

Offences—Service of notice of demand on one partner—Prosecution of another partner for failure to pay tax within time.—The service of a notice of demand under the Madras General Sales Tax Act, 1939, on one of the partners of a firm is sufficient notice to the firm and to all the partners who

are jointly and severally liable for the payment of the tax. Consequently if a notice of demand against the firm is served on one of two partners of the firm the other partner can be prosecuted under section 15(b) for failure to pay the tax due from him within the time allowed. The fact that the firm is a dealer within the meaning of Explanation (1) of sub-clause (b) of section 2 of the Act and can be proceeded against as a firm is not a bar to proceedings being initiated against the partners of the firm.—*AKULU PADDAYYA NAIDU In re* [1947] 1 S.T.C. 165 (Mad.).

—Under the Madras General Sales Tax Act, 1939, a firm is a person and for purpose of assessment it is treated as one entity. In default of payment pursuant to a notice under section 15(b) the firm is also liable to be prosecuted. Rule 19 of the Madras General Sales Tax Rules, 1939, does not override the provisions of the Act. A firm was assessed to sales tax. Notice under section 15 was issued to the firm and served on one of the partners. Another partner on whom no notice was served was prosecuted in his personal capacity for default in complying with the notice: *Held*, that the firm should have been prosecuted and not the partner. *Akulu Paddayya Naidu, In re* [1947] (1 S.T.C. 165; 1947 M.W.N. 603) distinguished.—*THE PUBLIC PROSECUTOR v. K. JACOB NADAR* [1951] 2 S.T.C. 53 (Mad.).

—*Conviction of two partners in their individual capacity for non-payment of tax due by firm—Legality.*—The conviction for an offence under section 15(b) of the Madras General Sales Tax Act, 1939, of only two partners of a firm in their individual capacity for non-payment of tax due by the firm which consisted of three partners is illegal. The acquittal of the accused would not stand in the way of a fresh complaint being laid against the firm and against all the three partners of the firm as such and it would not then be open to any one of them to raise any plea under section 403 of the Criminal Procedure Code. *Public Prosecutor v. K. Jacob Nadar* [1951] (2 S.T.C. 53) followed. *Akulu Paddayya Naidu, In re* [1947] (1 S.T.C. 165) distinguished.—*BEHARA LACHANNA PATNAICK, In re* [1952] 3 S.T.C. 222 (Mad.).

—*Prosecution of some partners in their individual capacity for contravening section 13, Madras Act.*—Where a firm is the assessee, it is the firm and not some of the partners in their individual capacity that must be prosecuted under section 15(h) of the Madras General Sales Tax Act, 1939, for wilfully acting in contravention of section 13. If a complaint had been laid against all the partners then that can be treated as prosecuting the firm. *Public Prosecutor v. Jacob Nadar* [1951] (2 S.T.C.

53) and *B. L. Patnaick, In re* [1952] (3 S.T.C. 222) followed.—*RANGALAL SOWCAR AND ANOTHER, In re* [1954] 5 S.T.C. 326 (Mad.).

—*Prosecution of one partner for non-payment of sales tax due by firm—Acquittal on the ground that firm should be prosecuted—Subsequent prosecution of firm—Legality.*—A firm consisted of two partners J and M. J was separately prosecuted under section 15(b) of the Madras General Sales Tax Act, 1939, for non-payment of sales tax due by the firm but he was acquitted on the ground that the defaulter was the firm and therefore the firm and not the partner was to be prosecuted. The State thereupon filed a prosecution against the firm for non-payment of sales tax due by the firm for the same year: *Held*, that J could not be put up again for trial in respect of the non-payment of sales tax for the same year for which he was prosecuted before and was acquitted and as he could not be put on trial, the other partner by himself alone could not also be put up for trial. Consequently both J and M should be acquitted.—*THE STATE PROSECUTOR v. MYLAPPA AND Co. AND OTHERS* [1954] 5 S.T.C. 337 (Mad.).

—*Prosecution of one partner for non-payment of tax by firm—Legality—Whether all partners should be prosecuted—Liability of sleeping partner—Mens rea, whether necessary.*—When a business is carried on by a partnership every partner of the firm, whether he is an active partner or is only a sleeping partner, is a "dealer" within the meaning of section 2(c) of the U.P. Sales Tax Act, 1948, and if, after service of the notice of demand, he fails to make the payment of tax, he thereby makes himself liable for prosecution under section 14(b). The view that either all or none of the partners of the firm should be prosecuted under section 14(b) for non-payment of tax due by the firm is unwarranted. It is perfectly legal for the authorities to prosecute either all of the partners of the firm or any one or more of them. The capacity in which the person concerned is prosecuted is also irrelevant. The offence under section 14(b) is independent of *mens rea*. A sentence or recurring fine under section 14 so long as the breach continues is however illegal.—*HIRA LAL v. THE STATE* [1955] 6 S.T.C. 662 (All.).

—*Prosecution for non-payment of tax—Proper procedure—Prosecution of partners—Legality.*—Under the Madras General Sales Tax Act, 1939, if a firm is assessed to tax, it is the firm that must be proceeded against and prosecuted under section 15(b) for non-payment of tax and not any of its partners in their individual capacity. When a firm is being prosecuted, it is against the name of the firm that the prosecution must lie and not

merely against the partners as such. But if the entire partners had been brought on record, the prosecution can be deemed to be a prosecution against the firm as all the partners are before the Court. But, if, in the course of the prosecution, the case against one of the partners of the firm is separated, then it ceases to be a prosecution against the firm, as the firm then collapses by one of the partners being proceeded against separately, unless it is specifically stated in the complaint that the prosecution is against the firm as such, and the name of the firm also is mentioned therein. If the firm as such is prosecuted under its name and style, then it does not matter whether all the partners are before the Court or only some of them are before the Court.—*P. HANUMANTHIAH v. THE DEPUTY COMMERCIAL TAX OFFICER, MOORE MARKET DIVISION, MADRAS* [1956] 7 S.T.C. 19 (Mad.).

—*Prosecution for non-payment of sales tax—Son of real partner prosecuted as de facto partner—Whether all partners were made parties to complaint—Legality of prosecution.*—A firm, which was assessed to sales tax, consisted of the first accused's father and another as partners. In a prosecution for non-payment of tax due by the firm, the accused contended that the complaint was bad because all the partners of the firm were not made parties to the complaint. The trial court overruled the objection and convicted them proceeding on the assumption that inasmuch as the father of the first accused was suffering from paralysis and the first accused was carrying on and managing the business of the firm he ought to be deemed a *de facto* partner: *Held*, that the Partnership Act does not make any distinction between a *de facto* partner and a *de jure* partner and simply because the son was acting on behalf of his father and helping him in the management of the affairs of the partnership, he could not be said to have become a partner in any sense of the term. Consequently the conviction of the accused was not proper.—*KATAM CHINNA VEERALAH AND ANOTHER v. THE STATE* [1957] 8 S.T.C. 686 (A.P.).

—*Prosecution of partners for delay in filing returns—Registration certificate not issued in firm name or names of partners—Legality of prosecution.*—A partnership firm would be included in the definition of the word "dealer" in the Bombay Sales Tax Act, 1946, and the Bombay Sales Tax Ordinance, 1952. Where the accused, R. M. Shah and N. Ratilal, who were partners of a firm named R. M. Shah & Co., were prosecuted under the Bombay Sales Tax Act for delay in filing the returns of the sales, but the registration

certificate was found to be issued in the name of R. D. Shah/Messrs R. M. Shah & Co. and none of the names of the accused appeared in it: *Held*, that neither the certificate was issued in the name of the partnership firm nor were the accused named as registered dealers and therefore the accused were not liable to furnish the returns.—*STATE v. R. M. SHAH & Co.* [1958] 9 S.T.C. 683 (Bom.).

—*Prosecution for non-payment of tax due by firm*—*All partners made parties*—*Legality of prosecution*.—Where in a prosecution for non-payment of tax due by a firm, all the partners of the firm are made parties to the prosecution proceeding, the prosecution is not vitiated by illegality.—*C.M. FRANCIS v. THE STATE OF KERALA* [1961] 12 S.T.C. 166 (Ker.).

—*Return*—*False return submitted on behalf of firm signed by one partner alone*—*Whether all partners criminally liable*.—Where a false return signed on behalf of a firm was signed by one partner alone, but all the partners were prosecuted under section 45(2)(a) of the Madras General Sales Tax Act, 1959, for wilfully submitting an untrue return: *Held*, (1) that the partner who submitted the return was liable to be convicted under the section; (2) that unless it was shown that the other partners knew about the exclusion of certain items from the return or about its falsity, there could be no question of wilfulness much less *mens rea* so far as they were concerned and they could not, therefore, be held criminally liable.—*M. AYYASAMI NADAR AND OTHERS v. THE STATE OF MADRAS* [1963] 14 S.T.C. 952 (Mad.).

Partner of firm—*Whether dealer*.—The fact that a firm comes within the definition of the word “dealer” does not by itself go to show that the partners of the firm cease to be dealers as defined in the U.P. Sales Tax Act, 1948. If a partner is carrying on a trade by himself, he would clearly be included within the definition and, if two of them join together and gave their concern a composite name, it does not mean that they cease to be dealers themselves.—*JAGAT BEHARI TANDON v. THE SALES TAX OFFICER, ETAWAH, AND ANOTHER* [1955] 6 S.T.C. 125 (All.).

—When a business is carried on by a partnership every partner of the firm, whether he is an active partner or is only a sleeping partner, is a “dealer” within the meaning of section 2(c) of the U.P. Sales Tax Act, 1948, and if, after service of the notice of demand, he fails to make the payment of tax, he thereby makes himself liable for prosecution under section 14(b). The view that either all or none of the partners of the firm

should be prosecuted under section 14(b) for non-payment of tax due by the firm is unwarranted. It is perfectly legal for the authorities to prosecute either all of the partners of the firm or any one or more of them. The capacity in which the person concerned is prosecuted is also irrelevant.—*HIRA LAL v. THE STATE* [1955] 6 S.T.C. 662 (All.).

—*Liability for tax due from syndicate*.—Under the Explanation to sub-section (d) of section 2 of the Patiala and East Punjab States Union General Sales Tax Ordinance, 2006 Bk., any association which sold or supplied goods to its members would be a “dealer”. Where the assessee was a syndicate supplying goods to its members, tax due from the syndicate could be recovered from the partner or partners of the syndicate under rule 39(1) of the Patiala and East Punjab States Union General Sales Tax Rules, 2006 Bk. But in order to make a person liable as partner for the tax due from the syndicate, it was necessary for the authorities to record a finding that he was a partner in the syndicate.—*RAMESHWAR DASS v. EXCISE AND TAXATION COMMISSIONER, PEPSU, PATIALA, AND OTHERS* [1959] 10 S.T.C. 218 (Pun.).

—Necessity to issue notice to person before holding him a partner of the business.—*AMIR CHAND v. THE SALES TAX OFFICER AND OTHERS* [1966] 17 S.T.C. 76 (All.), see under *DEALER* p. 470 *supra*.

—Person alleged to be partner—Recovery of arrears of sales tax from person alleged to be partner of assessee—Proper procedure—Necessity to serve notice—*Hyderabad General Sales Tax Rules, 1950, rule 34*.—*SHANKERLAL KARVA v. THE TAHSILDAR, KARIMNAGAR, AND OTHERS* [1958] 9 S.T.C. 246 (A.P.).

—Documents produced by firm before officer—Right of partner to produce before court.—*RAMCHANDRA v. LAXMAN DAS* [1961] 12 S.T.C. 367 (Raj.).

Refund—*Application for refund*—*Firm*—*Inter-State sales*—*Rectification of mistake*—*Refund by virtue of decision of Supreme Court*—*Application by partner of dissolved firm describing himself as ex-partner*—*Legality*.—The petitioner was entitled to certain refund of tax paid under the Central Sales Tax Act, 1956, by virtue of the decision of the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty* [1965] (16 S.T.C. 231) and of the decision of the High Court in *Govindaraju Chetty v. Commercial Tax Officer* [1968] (22 S.T.C. 46; 10 Law Rep. 605), but the application for rectification under rule 38 of Mysore Sales Tax Rules, 1957, was made only by a partner of the dissolved

firm: *Held*, that the application had to be disposed of by the Commercial Tax Officer under section 15(2) of the Mysore Sales Tax Act, 1957, as if no dissolution of the firm had taken place. The fact that the petitioner had described himself as an ex-partner of the dissolved firm could not affect the position in any way. *Held further*, that the order of refund, if any, should be made in favour of the dissolved firm and not in favour of the individual partner who made the application for refund.—**MALLIK HASHIM & Co. v. COMMERCIAL TAX OFFICER, BIJAPUR CIRCLE, BIJAPUR** [1969] 23 S.T.C. 317 (Mys.).

Sale—Transfer of property by member to firm—Whether sale.—*Per* **RAJAGOPALAN and RAJAGOPALA AYYANGAR, JJ.**—A transfer of property in goods by a member of a firm to the firm is a sale within the meaning of the Madras General Sales Tax Act, 1939. If therefore a partner of a firm is not individually licensed under the Act a purchase from him by the firm should be treated as a purchase from an unlicensed dealer.—**C. HAJEE ABDUL SHUKOOR AND COMPANY v. STATE OF MADRAS** [1955] 6 S.T.C. 352 (Mad.).

—*Whether there can be a sale by a firm to a partner.*—A partnership firm may enter into a transaction of sale with one of the partners of that firm in his individual capacity.—**FAZL BHAI DHALA & Co. v. COLLECTOR OF SALES TAX** [1961] 12 S.T.C. 216 (Ori.).

—*Dissolution—Allotment of goods to partner—Whether sale—Provision in Act treating such transaction as sale—Validity—Whether ultra vires Legislature.*—The allotment of goods of a firm amongst the partners on the dissolution of the firm did not constitute sale of goods within the meaning of the Indian Sale of Goods Act, 1930, and section 26(3) of the Bombay Sales Tax Act, 1953, in so far as it purported to bring such allotment to tax by fictionally treating it as a sale, did not fall expressly within the subject of legislation contained in entry 54 in List II of the Seventh Schedule to the Constitution. In enacting section 26(3) what the Legislature did was not to enact an ancillary or subsidiary provision intended to ensure the proper and effective functioning of the main legislation but to directly and expressly bring to tax a transaction which was not a sale within the meaning of the Indian Sale of Goods Act by fictionally treating it as such sale. This was constitutionally impermissible to the State Legislature. Therefore section 26(3), in so far as it purported to tax allotment of goods of a firm amongst partners on dissolution, was *ultra vires* the State Legislature. When the residue of the property of the firm

after payment of debts and liabilities and settlement of accounts is divided amongst the partners in specie no money consideration can be said to have been promised or paid by any partner to the firm or for the matter of that to the other partners as consideration for the goods allotted to him. Consideration undoubtedly there would be, for the partner to whom any particular goods are allotted on distribution would be giving up his interests in the goods allotted to the other partners in consideration of the other partners giving up their respective interests in the goods allotted to such partner. But such consideration can by no stretch of imagination be called a money consideration. If section 26(3) was a valid piece of legislation, it had clearly the effect of converting allotment of goods of the firm amongst the partners on dissolution into sale for all purposes of taxation and such allotment was liable to be included in the taxable turnover of the firm. When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion.—**STATE OF GUJARAT v. RAMANLAL SANKALCHAND AND Co.** [1965] 16 S.T.C. 329 (Guj.).

—See also **THE STATE OF GUJARAT v. TAMAKUWALA & SONS** [1966] 17 S.T.C. 390 (Guj.).

—*Assessee transferring stock-in-trade of business to partnership in which he is a partner—Liability to sales tax.*—The transfer of a person's business or stock-in-trade to a firm, of which he is a partner, as contribution of his capital therein does not amount to a sale of goods in the course of trade or business as a dealer within the meaning of the Kerala General Sales Tax Act, 1963. Such a transaction does not involve any sale of goods and the transferor does not part with property in the goods. He only shares his rights therein with the other partner under the contract of partnership. Even assuming there is a sale, it is not a sale in the course of trade or business, nor is it a transaction by a "dealer" as defined in the Act.—**C. M. HAMSA HAJI v. SALES TAX OFFICER, TIRUR** [1967] 20 S.T.C. 470 (Ker.).

—*Two firms having identical partners but different shares—Transfer of goods from one firm to another firm—Whether sale and liable to sales tax.*—To constitute a "sale" within the definition of that word in the Central Sales Tax Act, 1956, there must be two different persons, in the ordinary sense of the term person. When two firms

having identical partners transfer goods from one to the other, it will be really a case of one person transferring goods to himself and there will therefore be no "sale". Even if the shares of the partners in the two firms are different, it will not make any difference to the character of the transaction. The difference in the shares of the partners will have relevance only at the time when the profits and losses are ascertained and divided. When assets of the partnership are dealt with either for the purpose of acquisition or for sale, it cannot be predicated that the partners have specified shares in such assets. They have all got a common right of ownership in the property dealt with.—*MAHENDRA KUMAR ISHWARLAL & COMPANY v. THE STATE OF MADRAS* [1968] 21 S.T.C. 72 (Mad.).

Transfer of business—Dissolution of firm and business carried on by firm at two places transferred to two other firms simultaneously—Applicability of section 26(2), Bombay Sales Tax Act (3 of 1953)—Validity of section 26(3)(i)—Whether ultra vires State Legislature.—Three conditions must be fulfilled before a stock of goods transferred by a transferor to a transferee can be taxed under section 26(2) of the Bombay Sales Tax Act, 1953. First, there must be transfer of ownership of a part of the business of the transferor. Secondly, the other part of the business which is not transferred must remain with the transferor, and thirdly, the transferee must not hold a certificate of registration and must not obtain it within the prescribed period. These three conditions are cumulative and it is only if all of them are satisfied that section 26(2) can be invoked by the State for taxing the stock of goods transferred by the transferor to the transferee. On the dissolution of the respondent-firm consisting of five partners and carrying on business at two places, V and P, the business at P was under an arrangement arrived at between the partners, taken over by three of the partners, while the business at V was taken over by the other two partners in partnership with two others: *Held*, that when the business at V was transferred, no part of the business remained with the respondent-firm, because simultaneously the other part of the business at P was also transferred. The second condition mentioned in section 26(2) was therefore not fulfilled and the State was not entitled to resort to it for taxing the stock of goods transferred. Section 26(3)(i), in so far as it purports to tax allotment of goods of a firm amongst partners on dissolution, is *ultra vires* the State Legislature. *State of Gujarat v. Ramanlal Sankalchand and Co.* [1965] (16 S.T.C. 329) followed.—

THE STATE OF GUJARAT v. TAMAKUWALA & SONS [1966] 17 S.T.C. 390 (Guj.).

—*Joint Hindu family—Partition and formation of partnership to carry on business—Liability of quondam members of family or partnership in respect of escaped turnover of family.*—When a joint Hindu family carrying on a business and registered as a dealer effects a partition and thereafter some of the quondam members of the family carry on the business in partnership, neither the members of the joint Hindu family individually nor the partnership can be assessed to sales tax for a turnover which has escaped assessment at the time when the joint Hindu family was assessed to tax, inasmuch as there is no provision in the Madras General Sales Tax Act, 1959, or the rules framed thereunder for making an assessment on a joint Hindu family after partition. The elements of a transfer do not exist in such a situation and therefore section 27 of the Act will not help the department.—*R. BALUSWAMI CHETTIAR v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUPPUR RURAL, TIRUPPUR* [1968] 21 S.T.C. 412 (Mad.).

FIRST SALE

(See SINGLE POINT TAX)

FOREIGN DECISIONS

(See SUPREME COURT and CONSTRUCTION OF STATUTES)

FOREIGN LIQUOR

Medicinal preparations containing self-generated alcohol—Whether foreign liquor—Liability to special tax.—It is not on the sale of "foreign liquor" as understood in its ordinary or colloquial sense that the Bombay Sales Tax Ordinance (No. 2) of 1952 imposes special tax, but it is on the sale of "foreign liquor", as defined in clause (17) of section 2 of the Bombay Prohibition Act, 1949, read with the proviso thereto, which includes, by virtue of the notification issued by the State Government on the 20th of March, 1950, all liquid medicinal preparations containing self-generated alcohol prepared by a process of fermentation. Consequently sales of medicinal preparations containing self-generated alcohol prepared by a process of fermentation are liable to special tax as sales of foreign liquor under entry 4 of Schedule II of the Bombay Sales Tax Ordinance (No. 2) of 1952.—*D. P. DAVE v. THE STATE OF BOMBAY* [1960] 11 S.T.C. 137 (Bom.).

Foreign liquor—Whether subject to any duty of excise and exempt under section 8, Madras Act

—Whether taxable under section 3—Rate of tax on inter-State sales of foreign liquor not supported by C Forms—Nature of tax imposed under section 21-A, Madras Prohibition Act, 1937.—*PHIPSON AND COMPANY (PRIVATE) LTD. v. GOVERNMENT OF MADRAS* [1964] 15 S.T.C. 740 (Mad.).

Foreign liquor—Levy of sales tax under Sales Tax Act and Prohibition Act—Legality—Whether offends Article 301 or 304 of Constitution—Sales tax collected or gallonage fee paid under Prohibition Act—Whether can be included in turnover under Sales Tax Act.—*SPENCER & CO., MADRAS-2 v. THE JOINT COMMERCIAL TAX OFFICER, DIVISION NO. III, MADRAS-2* [1969] 24 S.T.C. 161 (Mad.).

FOREIGN SHIPS

Supplies made to foreign ships in Port of Cochin.—Supplies made to foreign merchant ships in a port should not be considered as not liable to sales tax. The concept of a floating island cannot be invoked for the avoidance of taxation under any domestic enactment.—*CALTEX (INDIA) LTD. v. THE STATE OF KERALA* [1961] 12 S.T.C. 655 (Ker.).

Sale to ocean-going ships of goods from bonded warehouse inside port—Whether a sale in the course of import or export.—*BURMAH-SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 533 (A.P.).

Sale of coal for consumption of steamers going abroad—Whether in the course of export.—See *STATE OF KERALA v. COCHIN COAL CO. LTD.* [1961] 12 S.T.C. 1 (S.C.).

Sale to ocean-going vessels of goods from customs bonded warehouse—Whether sales in the course of import.—See *THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. CALTEX (INDIA) LTD., MADRAS* [1962] 13 S.T.C. 163 (Mad.).

FORWARD CONTRACTS

Imposition of sales tax on forward contracts—Legality.—See page 294 *supra*.

Punjab Forward Contracts Tax Act (VII of 1951)—Whether contravenes Articles 246 and 269(1), Constitution, and *ultra vires* State Legislature.—The use of the expression "futures markets" in conjunction with "stock exchanges" in item 48 of the Union List in the Seventh Schedule of the Constitution of India suggests that what is contemplated is not the individual commission agent dealing in "futures", but something

analogous to a stock exchange, with a system of rules governing not only the place and time of business but also the conduct of business. The expression means much the same as "boards of trade" or "contract markets". The petitioners were firms or individuals carrying on business as commission agents for forward contracts in grain and other commodities on the basis that no delivery was given but differences only were paid or received by the constituents. They filed an application under Article 226 of the Constitution of India for a declaration that the Punjab Forward Contracts Tax Act, 1951, was *ultra vires* the powers of the Punjab Legislature as it contravened Articles 246 and 269(1) of the Constitution: *Held*, (1) that so far as the Act purported to control and to tax transactions in "futures markets", it was open to attack as contravening Article 269(1)(e), and as encroaching upon the Central legislative powers under items 48 and 90 of the Union List; (2) that the Act, as an Act to tax speculation in futures, at least so far as the petitioners were concerned, fell within item 62 of the State List as an Act to impose taxes on betting and gambling and to that extent at least was valid. Persons are not entitled to a declaration that an Act is *ultra vires* of the Constitution, if the only provisions of the Act which affect them are not found to be *ultra vires* and those provisions are separable.—*THE BULLION AND GRAIN EXCHANGE LTD. v. THE STATE OF PUNJAB* [1954] 5 S.T.C. Suppl. 1 (Pun.).

FRENCH POLISH

Exemption of goods on which duty is levied under Madras Prohibition Act, 1937—Payment under Prohibition Act of licence fee for denatured spirit used in the manufacture of French Polish—Claim for exemption of French Polish—Legality.—*SHRI SHAILA INDUSTRIAL AND SPIRITUAL COLONY CHARITIES v. STATE OF KERALA* [1958] 9 S.T.C. 12 (Ker.) and [1960] 11 S.T.C. 631 (Ker.).

FURNITURE

Furniture—Meaning of—*Shelving rack and binstak sold by company manufacturing iron and steel products*—Whether iron and steel furniture—**Rate of tax.**—Shelving racks and binstaks manufactured from iron and steel and sold by a company manufacturing iron and steel products, component parts and accessories are iron and steel furniture within the meaning of entry 44H of Schedule C to the Bombay Sales Tax Act, 1959. Shelving rack is used in an office or an industrial organization for the purpose of keeping files, papers etc. and is an article of convenience, which

is used for furnishing a place of business or an office. Binstaks are so manufactured that they can be arranged one over the other with a view to save floor space and at the same time to make it convenient for the businessmen to store their materials or articles of merchandise with great ease and convenience. Binstaks are therefore articles of convenience meant for furnishing places of business, furnishing being in the sense of equipping with movable articles. *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax* [1963] (14 S.T.C. 184) relied on.—*CHANDAN METAL PRODUCTS PVT. LTD. v. THE STATE OF GUJARAT* [1969] 23 S.T.C. 29 (Guj.).

Furniture—Meaning of—Articles described in catalogue of assessee as hospital equipment—Whether can be taxed as furniture—Tests stated.—The assessee manufactured and sold operation tables, beds including fowler beds, bedside lockers, dressing carriages, instrument cabinets, revolving stools, instrument trolleys, instrument tables and self-propelling chairs. These articles were described in the catalogue of the assessee as hospital equipment. The question was whether they could be classified as furniture and assessed to tax at one anna per rupee by virtue of Notification No. ST-905/X dated 31st March, 1956, issued under section 3-A of the U.P. Sales Tax Act, 1948, or whether they constituted hospital equipment and could be taxed only at the lower rate under section 3 of the Act. It was contended for the revenue that their design and equipment did not preclude them from being used as furniture, but there was nothing in the statement of case or the orders of the assessing, appellate and revisional authorities indicating the description, design and equipment of the articles: *Held*, (1) that it was for the revenue to place before the appellate and revisional authorities appropriate material indicating that by reason of the description, design and equipment of the articles, they were liable to be described as furniture; (2) that in order to decide whether certain articles are furniture or not, the test is not whether the articles are capable of being used as furniture, but whether they are ordinarily so used and can be accepted as such according to the general or popular notion of what furniture is. Sales tax is a liability which affects the mercantile community and the consumer public and therefore the list of items mentioned in the notification must be construed according to the understanding popular in that community and section of the people. To impose a technical or artificial meaning to the items will result in defeating or stultifying the intention behind the provision; (3) that as it had not been established that the

articles were liable to be classified as "furniture" within the meaning of Notification No. ST-905/X dated 31st March, 1956, they should be treated as articles chargeable under section 3 of the Act.—*IMPERIAL SURGICO INDUSTRIES, LUCKNOW v. COMMISSIONER SALES TAX, UTTAR PRADESH, LUCKNOW* [1969] 23 S.T.C. 201 (All.).

"Furniture of all types"—Whether includes garage stools.—The phrase "furniture of all types" in entry 44 of Schedule I of the Madras General Sales Tax Act, 1959, is wide enough to cover all kinds of furniture and is not confined to furniture used in homes and offices and therefore "garage stools" are within that entry.—*SIMPSON AND CO. LTD. v. STATE OF MADRAS*: No. 2 [1969] 23 S.T.C. 379 (Mad.).

GINGER

Green ginger—Whether vegetable and exempt from sales tax.—See EXEMPTION page 561 *supra*.

GLASS-WARE

Glass sheets—Whether glass-ware.—The Madhya Pradesh Board of Revenue held that plain glass sheets, such as are used for window panes and door panes, did not constitute "glass-ware" within the meaning of item 14 of the old unamended Schedule I to the C. P. and Berar Sales Tax Act, 1947.—*MOHANLAL RAMKISAN NATHANI v. THE STATE* [1952] 3 S.T.C. 305. On a reference under section 23(1) of the Sales Tax Act at the instance of the Commissioner, see below.

—The term "glass-ware" in item 14 in Part I of the Original Schedule I to the C. P. and Berar Sales Tax Act, 1947, whether it is interpreted in a narrow sense or otherwise, would include glass sheets. The High Court observed as follows:—"I do not think that all the articles specified in this Schedule can be properly regarded as luxury articles. Even assuming that Schedule I is confined to only articles of luxury, that is to say, articles used by the well-to-do classes, it seems difficult to hold that glass panes would not fall within the term 'glass-ware'. It is common knowledge that glass panes are not used by the poorer classes of people. For they are not affixed to the windows or doors of their houses. In my opinion, therefore, the term 'glass-ware' whether it is interpreted in a narrow sense or otherwise, would necessarily include glass panes."—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, NAGPUR v. MOHANLAL RAMKISAN NATHANI, RAIPUR* [1955] 6 S.T.C. 136 (Nag.).

Glass-ware—Whether includes glass sheets.—The term "glass-ware" in entry 15 of Schedule I,

Part I, to the C.P. and Berar Sales Tax Act, 1947, includes glass sheets. The question whether glassware includes glass sheets as understood in trade parlance is a matter of evidence and a question of fact. Where no evidence was led at any stage of the proceeding to show that in common parlance glassware does not include glass sheets, the question has to be decided on the construction of the entry and the provision in the Schedule.—**TRIBUWANDAS GULABCHAND AND BROTHERS, NAGPUR v. THE STATE OF MAHARASHTRA** [1965] 16 S.T.C. 452 (Bom.).

Glass bangles—*Whether glass-ware*.—Item 15 of Part I of the amended Schedule I to the C.P. and Berar Sales Tax Act, 1947, only excludes certain specified articles made of glass. "Glass bangles" are not among the excluded articles and they are therefore taxable as "glass-ware".—**Haji Jamaluddin Manguji v. THE STATE** ([1953] N.L.J. 405). On a reference to the High Court see below.

—Glass bangles can be considered as "glassware" within the meaning of entry No. 15 in Part I of the amended Schedule I to the C.P. and Berar Sales Tax Act, 1947.—**Haji Jamaluddin Manguji v. THE STATE** [1955] 6 S.T.C. 141 (Nag.).

GOODS

Application forms—*Whether goods*.—See APPLICATION FORMS.

Building materials—*Whether goods*.—See BUILDING CONTRACTS page 155 *supra*.

Animals and birds in captivity—*Whether goods*.—**K. J. ABRAHAM v. ASSISTANT SALES TAX OFFICER** [1960] 11 S.T.C. 291 (Ker.).

Concrete piles.—Reinforced concrete piles which are intended to be incorporated in a structure and are so incorporated are goods. "Such piles are plainly manufactured articles. They are chattels. They were intended to be incorporated in a structure and were so incorporated. They lost their identity as goods in that structure. But this fact does not prevent the piles from being goods any more than it prevents bricks or stones or nuts and bolts from being goods. The fact that the goods were specially manufactured and designed for a particular purpose cannot be held to deprive them of the character of goods."—**M. R. HORNIBROOK (PTY.) LTD. v. FEDERAL COMMISSIONER OF TAXATION** [1939] 62 C.L.R. 272.

Contract for sale of future goods—*Sale of ores from mines*.—Section 6 of the Sale of Goods Act, 1930, does not say that at the time of the contract of sale the goods must exist as "goods". There

can be a contract of sale of "future goods" also. It is therefore not correct to say that for the purpose of applying the second proviso to section 2(g), the goods must exist as goods at the time of the contract of sale. If a mine owner agrees to sell ores from his mines on the understanding that after the date of the agreement the ores will be extracted from them and delivered to the buyer, that contract must be held to be a contract for the "sale of goods" for the purpose of applying the second proviso to section 2(g) of the Orissa Sales Tax Act, 1947.—**MALCOLM ANGUS TULLOCH v. REVENUE COMMISSIONER, SAMBALPUR, AND OTHERS** [1958] 9 S.T.C. 799 (Ori.).

Contract with State Government for extraction of gum from forest trees—*Whether an interest in immovable property or a sale of gum*—*Liability of contractor to sales tax as first seller of gum*.—Under certain forest contracts entered into by the petitioner with the State Government for the extraction and collection of gum from trees growing in certain forest areas, the petitioner was given the right to collect not only the gum which could be collected or exuded from the trees at the time of the contracts but also the gum that might be secreted in future. There was however no guarantee about the occurrence or the quantity or quality of the forest produce. The assessing authority included in the taxable turnover of the petitioner the amount that the petitioner paid as consideration to the State Government for the contracts: *Held*, (1) that the contracts were in essence and in effect licences granted to the petitioner to enter on the forest lands coupled with a grant to collect gum existing on trees at the time of the contracts as well as gum that might be secreted in future during the period of the contracts. This right to take away gum from the trees, being an interest in immovable property, could not be regarded as coming within the definition of "goods" given in section 2(g) of the Madhya Pradesh General Sales Tax Act, 1958, and no sales tax could be levied on the sale of this right by the State Government to the petitioner; (2) that, as under the contracts, there was no sale of gum as such, the petitioner could not claim exemption from sales tax on the ground that on sales of gum sales tax being payable on the point of first sale, and the first sale being by the State, the liability for payment of sales tax was of the State Government; (3) that the sales of gum extracted and appropriated by the petitioner to the purchasers were the first sales, and on those sale transactions the petitioner was liable to pay sales tax on the basis of the sale price obtained by it for the gum sold by it.—**ANANDILAL NARAIN DAS v. COMMISSIONER OF SALES TAX,**

M.P., INDORE, AND OTHERS [1968] 22 S.T.C. 19 (M.P.).

Copyright—“Goods”—*Whether includes copyright—Whether definition of goods in Madras General Sales Tax Act, 1959, goes beyond definition in Constitution of India—Producer of cinematograph films—Grant by way of lease “entire world negative rights” of film for 49 years—Nature of rights granted—Whether amounts to a sale of goods—Liability to sales tax—Raw film and exposed film—Whether different commodities.*—Copyright is incorporeal movable property and the expression “all kinds of movable property” in the definition of “goods” in the Madras General Sales Tax Act, 1959, would necessarily take within its sweep even intangible or incorporeal movable property. The expression “goods” has not been defined in Article 311 of the Constitution of India in an exhaustive manner. It may be that in so far as incorporeal movable property is concerned, there might be difficulties in levying the appropriate tax, such as those contemplated in entry 30, 84 or 89 of List I or entry 51, 52 or 56 of List II of the Seventh Schedule of the Constitution. But that cannot control the definition of “goods” in any way. Notwithstanding the fact that the expressions employed in defining “goods” embody only the natural sense of the word, it cannot be held that “goods” has been restrictively defined in the Constitution to comprise only materials, commodities and articles, that is to say, concrete goods. Therefore the definition of “goods” in the Madras General Sales Tax Act, 1959, as meaning all kinds of movable property, does not go beyond the meaning given to that expression in the Constitution. An exposed film is in the light of the entries in the First Schedule to Act I of 1959 a different article from a raw film. It could not be said either on the basis of the report on which Act I of 1959 was passed or on the basis of the actual form which the legislation took with regard to films that an exposed film was not intended to be taxed solely for the reason that the raw film was liable to a single point levy. The assessee, a producer of cinematograph films, obtained the copyright of a story in Hindi and on the basis of that story produced a cinematograph film. The assessee then entered into an agreement with a limited company, called the lessee, under which the assessee made over to the lessee the outright lease of the world negative rights of the film for a period of 49 years for a consideration amounting to the declared cost of production of the film plus 15 per cent. thereon as profit to the assessee, subject in any case to a minimum price of Rs. 10,00,000 payable by the

lessee to the assessee. The agreement provided that as the lessee had undertaken unconditional liability to pay the basic price of Rs. 10,00,000, the lessee was entitled to hold until the expiry of the period of the lease the entire world negative rights without any lien thereon to the assessee. A clause in the agreement indicated the nature of the rights so given to the lessee as “the rights shall comprehensively include during and throughout the period of the lease all such rights and privileges as are given or reputed to be given by the proprietor of the world negative rights of a film to the sole and exclusive distributor of the world negative rights of the film.” The right of the assessee was limited only to the recovery of the unpaid consideration stipulated, and excluded any right on his part to get back or claim possession of the positive copies or copy of the negative. Another clause in the agreement provided as follows:—“The positive prints of the film shall throughout the period of the lease be the property of the lessee and it agrees to use them only in the manner authorised, expressly or impliedly, by this agreement, and the lessee agrees to return at the determination of the lease to the producer all the concerned positive prints then remaining with it in their then condition. The negative of the film shall remain in the custody of the producer throughout the lease period exclusively as the agent and the custodian of the lessee free of any charge for keeping custody and it is expressly understood that the producer cannot during the continuance of this agreement make use of the negative in any manner whatsoever other than for the purpose of taking out extra prints as and when required by the lessee against its paying the producer the entire charges for such prints or supplying the requisite raw film and paying charges for taking the prints as the producer may ask at the time.” The Sales Tax Authorities held that though the transaction was described as a lease for 49 years, the assessee had effected a sale of the negative print of the picture for a consideration and therefore the transaction was liable to sales tax under the Madras General Sales Tax Act, 1959: *Held*, that even if copyright is regarded as a species of movable property, the transaction did not connote a sale at all and it was therefore not liable to sales tax. Where the turnovers relating to the abovesaid transactions were not being included in the returns of the assessee in the several years preceding the assessment year due to a decision of the Sales Tax Appellate Tribunal on that point, and the Sales Tax Authorities also did not, in the preceding years, insist upon the inclusion of such turnover in the returns, imposition of penalty under

section 12(3), for failure to submit the return of that turnover in the assessment year, was not justifiable.—*A. V. MEIYAPPAN v. COMMISSIONER OF COMMERCIAL TAXES, BOARD OF REVENUE, MADRAS, AND ANOTHER* [1967] 20 S.T.C. 115 (Mad.).

Dyeing materials.—See DYEING page 513 *supra*.

Electricity—Whether “goods”.—See page 523 *supra*.

Electrical goods, meaning of—Tests stated.—See page 524 *supra*.

“Goods”, meaning of—*Sale of “loom hours” by member of Indian Jute Mills Association—Whether taxable.*—The assessee, a jute mill, was a member of the Indian Jute Mills Association which allotted certain “loom hours” to each mill on condition that if for any reason a mill was not able to utilise its quota of “loom hours” either due to shortage of raw materials, labour trouble or any other cause, it had the option of selling the “loom hours” to some other concern which was capable of utilising the same. The assessee sold some “loom hours” and the Sales Tax Authorities realised sales tax on the amount shown in the books of the assessee as sale price of “loom hours”: *Held*, that “goods” in section 2 (d) of the Bihar Sales Tax Act, 1947, must be construed to mean only tangible corporeal property and not abstract rights like “loom hours” or actionable claims, stocks, shares or securities. Consequently the sale of “loom hours” did not fall within the ambit of the Bihar Sales Tax Act and the amount shown in the books of the assessee as sale price of the “loom hours” was not rightly taxed by the authorities. Section 2(d) of the Bihar Sales Tax Act, 1947, defines “goods” to mean “all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property.” Movable property is not defined in the Sales Tax Act but it has been defined in the General Clauses Act to mean “property of every description excepting immovable property.” Section 3(25) of the General Clauses Act states that “immovable property” shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Counsel for the department argued that sale of “loom hours” was not sale of immovable property as defined in the General Clauses Act and therefore it was sale of movable property and so fell within the purview of the Bihar Sales Tax Act. *RAMASWAMI, J.*, in the course of

delivering his judgment observed as follows:—“There is a fallacy behind this argument for it proceeds on the assumption that ‘loom hours’ is property and therefore falls within the definition of movable property under the General Clauses Act. On this point Mr. Gopal Prasad referred to the definition of ‘property’ in the Sale of Goods Act. Section 2 (11) of the Sale of Goods Act defines ‘property’ to mean the general property in goods, and not merely a special property. But this definition has no bearing on the question we have to decide in the present case. There is a juristic distinction between a right or legally protected interest and the *res* or object of that right. It is obvious that section 2 (11) of the Sale of Goods Act defines property in the sense of the right and not of the *res*. In the present case the answer to the question at issue must depend upon the construction of the language of section 2 (d) of the Bihar Sales Tax Act. Section 2 (d) defines ‘goods’. If section 2 (d) is compared to section 2 (7) of the Sale of Goods Act, it would be immediately apparent that the definition in the Sales Tax Act is much narrower in scope than the definition in the Sale of Goods Act. In the Bihar Sales Tax Act the definition of ‘goods’ excludes not merely actionable claims but also stocks, shares or securities but in the Sale of Goods Act the definition includes stocks and shares. It is also important to notice that the latter part of section 2 (d) of the Bihar Sales Tax Act states that ‘goods’ shall include all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property. The expression ‘movable property’ in the first part of section 2 (d) must be read in the context and collocation of the language of the latter part. If section 2 (d) is so read, it is clear that ‘goods’ in the Bihar Sales Tax Act must be construed to mean only tangible corporeal property and not abstract rights like loom hours or actionable claims, stocks, shares or securities. It follows that in the present case the sale of loom hours does not fall within the ambit of the Bihar Sales Tax Act and the amount shown in the books of the assessee as sale price of the loom hours was not rightly taxed by the authorities.” Their Lordships assumed in this case that there was legal sanction behind the transfer of this right.—*THE STATE OF BIHAR v. RAMESHWAR JUTE MILLS LTD.* [1953] 4 S.T.C. 179 (Pat.).

Goods, meaning of—*Standing timber—Whether goods.*—In determining the taxability of the sale of goods under the Sales Tax Act, the definition of “goods” in that Act must govern the case and not the definition in the Sale of Goods Act. The

definition of "goods" in the Sale of Goods Act cannot therefore be used in interpreting Explanation II to section 2(g) of the Sales Tax Act. *Sawar trees* which are immovable property as defined in the General Clauses Act are included in the definition of "goods" in the Sale of Goods Act if they are agreed to be severed from the earth before sale or under the contract of sale, but they are not so included in the definition under the Sales Tax Act. Standing timber is therefore not "goods" under the Sales Tax Act or under the Sale of Goods Act; but it would be goods under the latter Act if there is an agreement to sever the trees before sale or under the agreement of sale.—*HUSENALI ADAMJI & CO., CHANDA v. COMMISSIONER OF SALES TAX, M.P., NAGPUR* [1956] 7 S.T.C. 88 (Nag.).

—Standing timber in a forest for the cutting of which a contract is given is not "goods" within the definition of "goods" contained in section 2(13) of the Bombay Sales Tax Act, 1959.—*Husenali Adamji & Co. v. Commissioner of Sales Tax, M.P.* [1956] (7 S.T.C. 88) followed.—*CHAMPALAL v. DEPUTY COMMISSIONER OF SALES TAX, EASTERN DIVISION, NAGPUR, AND 3 OTHERS* [1966] 18 S.T.C. 424 (Bom.).

Grains or sugarcane are goods within the meaning of the Bihar Sales Tax Act, 1944.—*RAJA VISHESHWAR v. PROVINCE OF BIHAR* [1951] 2 S.T.C. 129 (Pat.).

Money is not goods which can be inspected by the Assistant Commercial Tax Officer under the Madras General Sales Tax Act, 1939.—*MARIYALA VENKATESWARA RAO, In re* [1951] 2 S.T.C. 167 (Mad.).

Packing materials.—See **PACKING MATERIALS** *infra*.

Printing materials—Whether goods.—See **PRINTER** *infra*.

Second-hand goods.—The provisions of the Excise Tax Act of Canada, which imposed a tax on the sale of goods, are applicable to the sale of second-hand goods.—*HER MAJESTY THE QUEEN v. SAMUEL H. LEVENTHAL ET. AL.* [1952] Canadian Tax Cases 160.

—See also under **DEALER**.

Steam—*Whether goods.*—"Goods" for the purposes of the Hyderabad General Sales Tax Act, 1950, is any property visible, tangible, corporeal or movable. As steam is tangible property it comes within the meaning of the word "goods" in the Act. Therefore sale of steam would be subject to sales tax unless it is exempt. Since the object of the Hyderabad General Sales Tax

Act is to levy sales tax on all goods generally other than those specified in the exempted list, an assessee who claims exemption from sales tax must show that he comes within the exempted list or he has been exempted by the Government under section 7. The assessee-company supplied steam through pipes to another factory collecting only manufacturing charges without making any profit on the service: *Held*, that steam came within the definition of "goods" in the Act and was therefore liable to sales tax.—*NIZAM SUGAR FACTORY LTD. v. COMMISSIONER OF SALES TAX, HYDERABAD* [1957] 8 S.T.C. 61 (Hyd.).

—Steam falls within the definition of "goods" given in the Sales Tax Acts of 1947 and 1958; but the supply of steam by the assessee was not taxable for the reason that when the assessee supplied steam it was not with a profit-motive.—*MADHYA PRADESH ELECTRICITY BOARD, JABALPUR v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1968] 21 S.T.C. 202 (M.P.). On appeal to the Supreme Court see next para. :—

—Where the Nepa Mills supplied water free to the Electricity Board and the Board agreed to supply steam to the mills at a rate based solely on the coal consumed in producing steam: *Held*, that the arrangement was not one for the sale of steam but was in the nature of a works contract and the supply of steam by the Board to the Nepa Mills was not liable to sales tax.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH v. MADHYA PRADESH ELECTRICITY BOARD* [1969] 23 S.T.C. Short Notes 3 (S.C.).

X-rays and copies of skiagraph.—"The medical practitioner who provides the service of making X-rays and furnishes copies of the skiagraph to the patient, although he causes a new thing or entity to come into existence, is not a producer of goods. Nor is the artist who makes an etching for a client and provides him with a dozen copies a manufacturer of commodities."—*DEPUTY FEDERAL COMMISSIONER OF TAXATION (ADAMS) v. RAU* [1931] 46 C.L.R. 572.

GOVERNMENT

(See also **DELEGATED LEGISLATION**)

Government.—A notification issued in exercise of a power conferred by a statute has statutory force and validity, and its provisions are to be treated as if they were contained in the statute itself.—*RAM KUMAR RAJENDRA SWAROOP v. COMMISSIONER OF SALES TAX* [1967] 19 S.T.C. 241 (All.).

Government—*Effect of notification.*—When there is a gazette notification made by the State

Government, the Courts must look into the substance of that notification and not merely the form. Whatever may be the description given in that notification, if in substance it appears to be an order passed in exercise of a statutory power, full effect must be given to it even though the notification does not purport to have been issued in exercise of any statutory power.—**WILLIAM JACKS AND CO. LTD. v. THE STATE OF ORISSA** [1965] 16 S.T.C. 693 (Ori.).

Exemption of State and Central Government.—Provisions, whether discriminatory.—**FIRM JASWANT RAI JAI NARAIN v. SALES TAX OFFICER AND OTHERS** [1955] 6 S.T.C. 386 (All.).

Classification of the State and Central Governments as a separate class different from ordinary dealers—Whether discriminatory.—**FIRM JASWANT RAI JAI NARAIN v. SALES TAX OFFICER AND OTHERS** [1955] 6 S.T.C. 386 (All.).

Government departments—Whether separate entities.—**THE UNION OF INDIA AND ANOTHER v. COMMERCIAL TAX OFFICER, WEST BENGAL, AND OTHERS** [1956] 7 S.T.C. 113 (S.C.).

—The various departments of the Government have no legal personality apart from that of the Government itself.—**THE TRIVANDRUM PERMANENT FUND LTD. v. STATE OF TRAVANCORE-COCHIN AND OTHERS** [1957] 8 S.T.C. 74 (Trav.-Co.).

Power to amend Schedule of exemptions.—Sales to Government were exempted by the C.P. and Berar Sales Tax (Amendment) Act, 1949, but this exemption was withdrawn by the State Government by amending the Schedule by notification No. 1503-1349-VIII, dated 18th September, 1950. The petitioners contended that this action amounted to legislation by the State Government and was *ultra vires*: *Held*, that it was open to the State Government to amend the Schedule and the amendment was not *ultra vires*.—**PANDIT BANARSI DAS v. STATE OF MADHYA PRADESH AND OTHERS** [1955] 6 S.T.C. 93 (Nag.). The Supreme Court, on appeal from this decision, held as follows:—

—Per S. R. DAS, C.J., VENKATARAMA AIYAR, S. K. DAS and SARKAR, JJ.—The power conferred on the State Government by section 6(2) of the C.P. and Berar Sales Tax Act, 1947, to amend the Schedule relating to exemption is in consonance with the accepted legislative practice relating to the topic, and is not unconstitutional. Moreover sub-sections (1) and (2) of section 6 together form integral parts of a single enactment, the object of which is to grant exemption from taxation in respect of such goods and to such extent as may from time to time be determined by the State Government. Section 6(1),

therefore, cannot have an operation independent of section 6(2), and an exemption granted thereunder is conditional and subject to any modification that might be issued under section 6(2). Sales to Government were exempted under item 33 in Schedule II to the Act as enacted by Act XVI of 1949, but this exemption was withdrawn by the Government by amending the Schedule by a notification dated 18th September, 1950. It was contended that the notification was *ultra vires* the Government: *Held*, that the notification was *intra vires* the Government and was not open to challenge.—**PANDIT BANARSI DAS BHANOT AND OTHERS v. THE STATE OF MADHYA PRADESH AND OTHERS** [1958] 9 S.T.C. 388 (S.C.).

Power to amend Schedule.—Under the Vindhya Pradesh Sales Tax Ordinance (II of 1949) the State Government was competent to amend the Schedule but it had to follow a particular procedure contained in section 6(2). At first the Government should notify in the Gazette the amendments that it proposed to make and one month afterwards it should again publish a notification that all or some of the proposed amendments had been made. Where some changes were made in the Schedule without giving one month's notification: *Held*, that as the amendments were made without notice and reconsideration they were invalid as being in violation of section 6(2). *Held further*, that it could not be said that the amendments should be deemed to have been brought into force one month after their publication.—**HEMCHAND AND OTHEES v. STATE OF VINDHYA PRADESH** [1951] 2 S.T.C. 147.

Power to grant exemption.—The appellant applied to the Sales Tax Commissioner under the old unamended rule 25 of the Sales Tax Rules claiming exemption from payment of tax on the ground that he dealt exclusively in products of cottage and home industries. The Commissioner rejected the application and the appellant appealed to the Board of Revenue. It was contended for the State that the appeal was not maintainable inasmuch as the order passed by the Commissioner must be deemed to have been passed by him as an agent of the State Government under section 7 of the Act and the Board of Revenue, being a body created by the State Government to exercise some of its powers and discharge some of its functions, could not sit in judgment over the decisions of the State Government: *Held*, that the State Government could not delegate the powers under section 7 to a subordinate authority like the Sales Tax Commissioner, that the prescribed authority who should decide whether exemption should be granted was

the Sales Tax Commissioner and not the State Government and that an appeal lay to the Board of Revenue against the order of the Commissioner. Dealing with the scope of section 7, H. S. Kamath, the learned President of the Madhya Pradesh Board of Revenue, observed as follows:—"Section 6 deals only with the question of exemption in respect of goods specified in Schedule II, while the scope of section 7 is unrestricted. The unrestricted powers under section 7 are reserved exclusively to the State Government; and there is no provision as the law stands at present, whereby the State Government can delegate those powers to a subordinate authority like the Sales Tax Commissioner."—*KISANLAL RADHAKISAN v. THE STATE* [1952] 3 S.T.C. 336.

Power to grant exemption by issuing notification—Subsequent cancellation of this notification by another notification—Validity of second notification.—The appellant was a dealer in tobacco and he was liable to pay sales tax on his turnover under section 3(1) of the Travancore-Cochin General Sales Tax Act, 1125. In exercise of the powers conferred by section 6(1) of the Act, the Government issued a notification granting exemption from liability to pay this tax. Subsequently this notification was cancelled by another notification issued by the Government under section 6(1). The petitioner contended that the second notification was *ultra vires* the powers of the Government inasmuch as it had the effect of imposing a tax on him and under Article 265 of the Constitution no tax could be imposed except under an express authority conferred by statute: *Held*, that the second notification could not be said to have the effect of imposing any new tax on the petitioner but had merely removed the ban that had been placed on the levy of the tax which the statute had already imposed under section 3(1). The power of removing the ban was co-extensive with the power granted by section 6(1) to impose the ban and therefore the second notification was not *ultra vires* the powers of the Government.—*A. SUBRAMANIA IYER v. TRAVANCORE-COCHIN STATE AND ANOTHER* [1956] 7 S.T.C. 826 (Trav.-Co.).

—If the State Government has the power to grant an exemption by issuing a notification, it has also the power to withdraw the exemption by rescinding the notification by which it was granted. The power conferred on the State Government by section 6 of the General Sales Tax Act, 1125, does not enable it to issue a notification either granting or withdrawing an exemption with retrospective effect. But it cannot be said that by withdrawing the benefit of the exemption from

the date of the notification, that notification is being given retrospective effect merely because a licence taken in fulfilment of the conditions stipulated by the notification granting the exemption is for a period beyond the date of the withdrawal. In exercise of the power conferred by section 6 of the General Sales Tax Act, 1125, the State Government issued a notification dated 15th June, 1950, exempting dealers other than the first and last dealers from the payment of tax in respect of the sale of copra on condition that they took out a licence under rule 21 of the Travancore-Cochin General Sales Tax Rules, 1950, on payment of the fees prescribed under rule 22 thereof. This exemption was withdrawn by the State Government by issuing another notification amending the earlier notification and this amendment came into force on 18th November, 1952. The question was, whether the plaintiff who was an intermediate dealer and whose licence enured up to 31st March, 1953, was entitled to the exemption for the period 18th November, 1952, till 31st March, 1953: *Held*, that the duration of the licence had nothing whatever to do with the period for which the exemption was available. As it was the notification that granted the exemption and not the licence, the period of the exemption was the period for which the notification remained in force. Therefore the plaintiff was not entitled to the exemption for the period 18th November, 1952, to 31st March, 1953. *A. Subramania Iyer v. The Travancore-Cochin State and Another* [1956] (7 S.T.C. 826; 1956 K.L.T. 719) referred to.—*STATE OF KERALA v. M. VELAYUDHAN* [1963] 14 S.T.C. 382 (Ker.).

Notification exempting sale of foodgrains on obtaining exemption certificate—Validity—Power of Government to fix fees—Effect of notification.—The notification dated 30th September, 1956, issued by the State Government under section 4 of the U.P. Sales Tax Act, 1948, stating that the provisions of section 3 of the Act were not to apply to the sale of foodgrains on certain conditions was neither invalid nor void. The only effect of the notification was that a dealer had the option of either obtaining an exemption certificate after paying the amount due from him in accordance with the notification or of not taking advantage of the notification in which case he could be assessed to tax in accordance with the provisions of section 3. The fees permitted to be prescribed by the Legislature by clause (b) of section 4 are capitalised taxes and not fees for the issue of exemption certificates.—*FIRM RAM PRASAD BANWARI LAL v. SALES TAX OFFICER, MORADABAD* [1959] 10 S.T.C. 48 (All.).

Power to grant and withdraw exemptions under section 6(1), Madras General Sales Tax Act, 1939.—K. PARTHASARATHY MUDALIAR *v.* THE STATE OF MADRAS [1957] 8 S.T.C. 632 (Mad.).

Power of Government to grant exemption—Jaggery—Withdrawal of exemption granted to jaggery and gur by amending Schedule and simultaneous issue of notification granting exemption to palm jaggery—Validity—Whether discriminatory.—The exemption granted to jaggery and gur under the Madras General Sales Tax Act, 1959, was withdrawn from 1st January, 1968, when item 5 of the Third Schedule to the Act was amended by the Government by issuing a notification under section 59(1) of the Act and this became law as Act 2 of 1968 when the Legislature approved the notification. On the same day, in exercise of their powers under section 17(1), the Government issued another notification granting exemption in respect of the tax payable on all sales of palm jaggery. The grant of such an executive exemption was challenged in the High Court by certain dealers in cane jaggery by a petition under Article 226 of the Constitution: *Held*, (1) that the policy of taxation is flexible and a provision empowering the executive to exempt particular goods from a duty is valid; (2) objectively viewing the provisions attacked, it could not be said that the Legislature or the executive arbitrarily acted to the prejudice of the traders in cane jaggery; (3) the imposition of tax on palm jaggery and cane jaggery under Act 2 of 1968 and the subsequent grant of exemption from such tax to palm jaggery alone under section 17 did not cumulatively or otherwise impose any unreasonable restriction on trade in cane jaggery; (4) the exemption granted to sales of palm jaggery was competent and even if it were to be viewed as restrictive of trade in relation to cane jaggery, such a restriction was reasonable, rational and necessary in the public interest; (5) cane jaggery and palm jaggery being two different commodities, the State Government was not unjustified in differentiating them for tax purposes, and therefore no question of discrimination arose.—K. SUBRAMANIA PILLAI AND OTHERS *v.* STATE OF MADRAS [1969] 23 S.T.C. 359 (Mad.).

Exemption granted by Government under statutory power.—Power of Legislature to take away that exemption.—EPARI CHINNA KRISHNA MOORTHY AND ANOTHER *v.* THE STATE OF ORISSA AND OTHERS [1964] 15 S.T.C. 461 (S.C.).

Power of Government to give artificial meaning to words.—See BHIKA MAL MUSADDI LAL *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1963] 14 S.T.C. 770 (All.).

Power to levy sales tax at whatever rate.—See GANGA RAM SURAJ PARKASH *v.* THE STATE OF PUNJAB [1963] 14 S.T.C. 476 (Punj.), NABHA RICE AND OIL MILLS *v.* THE STATE OF PUNJAB AND OTHERS [1963] 14 S.T.C. 559 (Punj.) and DEVI DASS GOPAL KRISHNAN AND OTHERS *v.* THE STATE OF PUNJAB AND OTHERS [1967] 20 S.T.C. 430 (S.C.).

Power to issue notification fixing last purchase as taxable point.—Notification No. HI/10674/57/RD-2 dated 28th September, 1957, issued by the Kerala Government in so far as it sought to make the last purchase the taxable point in respect of pepper and ginger and some other articles was illegal, being *ultra vires* the powers conferred upon the Government by section 5(vii) of the General Sales Tax Act, 1125. Section 5(vii) empowered the Government to issue notification only in respect of sale of goods at such single point in the several sales by successive dealers and not at any point of purchase. If in respect of any sale it was intended that the gross turnover of a dealer should be the amount for which the goods were bought by him, the proper thing to do would have been to make specific provision for such cases in sub-rule (2) of rule 4.—PARAM-BATHKANDY ABU *v.* THE STATE OF KERALA [1960] 11 S.T.C. 267 (Ker.).

Power to enhance rate of tax—Notification under proviso to section 5(1), Punjab Act, doubling rate of tax on certain dealers—Validity—Issue of three months' notice, whether necessary—Whether notification violates Articles 14 and 19(1)(g) of Constitution.—The first sentence of the proviso to sub-section (1) of section 5 of the East Punjab General Sales Tax Act, 1948, deals with the levying of double the rate of tax. The second sentence, which is an independent sentence, deals with the notification relating to amendment of the Schedule. Under the proviso the Government has to issue a notification giving at least three months' notice to amend the Schedule, but no time is prescribed for issuing a notice doubling the rate of tax. The words "so to do" refer to the amendment of the Schedule and the expression "like notification" merely means a notification of the type mentioned above. It could not therefore be held that the first sentence in the proviso laid down that at least three months' notice should be given for doubling the rate. It is open to the Government to impose a tax on persons with certain extent of business and exempt others who have not got business to that extent. It is not necessary for equal protection before the law that every businessman must be taxed alike whatever his financial extent of

the business. Consequently the notification issued by the Punjab Government dated 28th November, 1956, levying double the rate of tax on certain dealers with effect from 1st December, 1956, did not violate Article 14 or 19(1)(g) of the Constitution and was not invalid.—*LALA GIAN CHAND AND OTHERS v. PUNJAB STATE AND OTHERS* [1957] 8 S.T.C. 646 (Punj.).

Power of Government to frame rules levying fees on memoranda of appeals.—See *CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1960] 11 S.T.C. 716 (S.C.). See also [1961] 12 S.T.C. 236 (S.C.) and *BAJRANGLAL NANDALAL v. COMMISSIONER OF TAXES, ASSAM* [1960] 11 S.T.C. 125 (Assam).

Validity of assessment based on Government order.—*SITARAM KAMAL PRASAD v. COLLECTOR OF SALES TAX* [1955] 6 S.T.C. 339 (Ori.).

Government department purchasing and selling essential commodities for the benefit of the people—Whether carries on business—Whether a dealer.—*NAGAU SAHAR KENDRIYA SAHAKARI KAR VIKRAYA SANGH AND ANOTHER v. THE STATE OF RAJASTHAN AND OTHERS* [1968] 21 S.T.C. 114 (Raj.).

GROUNDNUTS

Groundnuts—Whether include kernel.—The expression groundnut in rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, includes the groundnut kernel also.—*SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS (NOW ANDHRA)* [1954] 5 S.T.C. 357 (Mad.).

—The intention of sub-rule (2) of rule 5 of the Hyderabad General Sales Tax Rules is to levy tax on the purchase turnover of agricultural produce or raw materials, such as hides and skins and the word “groundnut” occurring in that sub-rule should be interpreted to mean unshelled groundnut produced by the agriculturists and not the kernel. Under that sub-rule therefore the purchase turnover of a buyer of unshelled groundnut or the pod is what is intended to be taxed and not of the shelled groundnut or kernel.—*KISHENLAL OIL MILLS, HYDERABAD v. COMMISSIONER OF SALES TAX, HYDERABAD* [1955] 6 S.T.C. 650 (Hyd.).

—Rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, applies not only to groundnut but also to groundnut kernel, inasmuch as the word “groundnut” is a comprehensive term which takes in kernel also.—

MOTILAL HARIPRASAD AND BROTHERS v. THE STATE OF ANDHRA [1955] 6 S.T.C. 654 (Andh.).

—The word “groundnut” in rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is of wide amplitude so as to embrace within its compass the kernel also and therefore groundnut kernel is liable to be taxed at the purchase point.—*MOTILAL HARI PRASAD AND BROS. AND OTHERS v. THE STATE OF ANDHRA* [1959] 10 S.T.C. 20 (A.P.).

—The word “groundnut” in rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, includes groundnut kernel also.—*BERAR OIL INDUSTRIES AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR* [1959] 10 S.T.C. 199 (A.P.).

—*Conversion of unshelled groundnuts into seeds*—*Seeds again assessed to tax*—*Right to set-off or refund.*—The applicants purchased unshelled groundnuts during the period 1st November, 1952, to 31st March, 1954, and in respect of this, tax was recovered by the Sales Tax Authorities. Subsequently the unshelled groundnuts were converted into seeds and for the period 1st April, 1954, to 31st March, 1955, the assessing authority assessed to tax the stock that took the form of seeds. The applicants contended that tax was being levied on the same article and so they were entitled to a set-off in respect of the tax already paid by them for the period 1st November, 1952, to 31st March, 1954: *Held*, that the Legislature has made no distinction between unshelled groundnuts and seeds, as is clearly apparent from entry 5 in Schedule B to the Bombay Sales Tax Act, 1953, and therefore the applicants were entitled to a refund or a set-off in respect of the amount which they had already paid by way of tax for the period 1st November, 1952, to 31st March, 1954.—*MULRAJ RANCHHODDAS v. THE STATE OF BOMBAY* [1960] 11 S.T.C. 41 (T.D.).

Groundnuts—Whether oil-seeds—Levy of purchase tax—Legality.—Groundnuts cannot be treated as oil-seeds to justify the imposition of purchase tax under the Punjab General Sales Tax Act, 1948. Where an assessee has challenged the legality of the imposition of tax by the Sales Tax Officer and the matter goes to the root of the jurisdiction of the officer a petition under Article 226 of the Constitution is entertainable by the High Court.—*HANS RAJ CHOUDHRI v. J. S. RAJYANA, EXCISE AND TAXATION OFFICER (ENFORCEMENT)* [1967] 19 S.T.C. 489 (Punj. & Har.).

Groundnut—Whether oil-seeds.—Ordinarily, the dictionary meaning of a word is not helpful in determining its meaning in a taxing provision,

such as the Sales Tax Act, and a word used in such a taxing provision should be assigned the meaning which it has received in the commercial circles. Men of business in India regard groundnut as an oil-seed and therefore groundnut is an oil-seed.—*AVADH SUGAR MILLS LTD. v. SALES TAX OFFICER AND ANOTHER* [1968] 21 S.T.C. 295 (All.).

—See also *RADHAKRISHNA AND CO. v. STATE OF ANDHRA PRADESH AND ANOTHER* [1969] 24 S.T.C. 320, at page 332 (A.P.).

Purchase and sale of groundnuts—Point at which groundnut and untanned hides and skins are to be taxed—Distinction.—The argument that the point at which groundnuts can be taxed is only the point of sale and not the point of purchase proceeds on an erroneous assumption. There is a distinction in the method of assessment of untanned hides and skins and of groundnuts. In the case of untanned hides and skins, rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules provides that the point or the event at which tax is attracted is the sale, but the turnover in such an event should be calculated under rule 4 on the purchase price and not on the sale price. This is totally different from the case of groundnuts, as there is no similar rule regarding the purchase and sale of groundnuts. The charging section, section 3, directs that every dealer should pay for each year tax on his total turnover and rule 4 provides that in the case of groundnuts the turnover should be calculated on the amount at which goods were purchased by the dealer. The tax, therefore, is not with reference to the sale or purchase as such, but upon the dealer on the basis of his turnover, which is subjected to the tax by the charging section.—*THE STATE OF MADRAS v. EASTERN SUPPLIES LTD.* [1954] 5 S.T.C. 344 (Mad.).

Purchase of groundnuts from producers by manufacturer of groundnut oil—Whether entitled to exemption as agricultural produce.—*SRI KANYAKAPAMESWARI GINNING AND GROUNDNUT OIL MILL CONTRACTORS CO. v. THE STATE OF MADRAS* [1955] 6 S.T.C. 38 (Mad.).

Purchase of groundnuts—Liability to tax of last purchaser of groundnuts selling them after assessment year.—Under section 5(4) of the Mysore Sales Tax Act, 1957, if a dealer in groundnuts is the last purchaser in the assessment year, he is clearly liable to pay the tax in respect of that purchase turnover even if he, in his turn, sells those goods to another dealer after the expiry of the assessment year. The liability to pay the tax referred to in that section, which arises by reason of the purchase being the last purchase in the assessment year, does not disappear if the goods are not

again sold during that year but are sold only subsequently. [It was found in this case that that part of section 15 of the Central Sales Tax Act, 1956, which forbade the levy of sales tax in respect of transactions relating to declared goods at more than one stage had not to any extent been transgressed. But their Lordships did not express any opinion on the question whether an assessee would be entitled to refund if tax was realised from the dealer to whom the assessee subsequently sold the groundnuts.] *Kishinchand Chellaram v. Commissioner of Income-tax* [1956] (29 I.T.R. 993) and *Abdulsalam Rowther v. State of Kerala* [1961] (12 S.T.C. 98) relied on.—*HORMUSJI HIRJIBHOY & CO. v. COMMERCIAL TAX OFFICER, CIRCLE II, HUBLI* [1962] 13 S.T.C. 773 (Mys.).

Sale of groundnuts by agriculturists—Provision imposing tax on purchasers—Validity—Whether rule 5(2), Hyderabad Sales Tax Rules, *ultra vires*—Whether offends Article 14 of Constitution of India—Whether tax can be collected by dealers from agriculturists—Nature of sales tax.—*KONDURI BUCHI RAJALINGAM v. STATE OF HYDERABAD AND OTHERS* [1954] 5 S.T.C. 401 (Hyd.); [1958] 9 S.T.C. 397 (S.C.).

Tax on purchase turnover—Whether sale necessary for imposition of tax on purchase turnover.—Under rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules dealings in groundnut are taxable at the purchase point. When exactly an assessee sold the groundnut he had purchased or when exactly he converted that groundnut into oil did not matter so long as the condition required by rule 4(2) was satisfied that the groundnut was purchased by the assessee in the course of his business. The contention that rule 4(2) does not authorise the imposition of a sales tax on the turnover on the purchase price of groundnut until there is proof that what has been bought has been sold is therefore not correct.—*SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS (NOW ANDHRA)* [1954] 5 S.T.C. 357 (Mad.).

Tax on purchase turnover—Whether sale necessary for imposition of tax on purchase turnover—“Series of sales” meaning of.—It is lawful for a State to impose tax on the purchase turnover of a dealer whether or not there is a subsequent sale by him of the same goods. Section 5 of the Hyderabad General Sales Tax Act, 1950, is not a charging section. The real charging section is section 4. The expression “series of sales” in section 5 does not mean that a tax can be levied only when there are more sales than one. Tax can be levied under the Act even when there is only one sale so long as such sale is by a dealer

or to a dealer. The Government can levy tax on dealers so long as there is a transfer of property in goods by one person to another in the course of trade or business involved in such transactions. Therefore the contention that section 5(1) does not authorise imposition of tax on purchase turnover of groundnut until the same commodity bought by the dealer is subsequently sold is not valid. It is also not essential that there should be a series of sales to attract liability to tax under the Act.—**GANGABISHEN MOHANLAL v. SALES TAX OFFICER, XI CIRCLE, HYDERABAD** [1956] 7 S.T.C. 460.

—See also **SATYANARAYANA OIL TRADING COMPANY v. SALES TAX OFFICER, GULBARGA** [1956] 7 S.T.C. 548.

Tax at purchase point—Whether sale necessary for imposition of tax on purchase point.—Tax can be collected either at sale point or purchase point and power is vested in the department to levy tax on the groundnuts at the purchase point. In order to impose tax at the purchase point, it is not necessary for the department to await the sale of the very goods purchased by the dealer. There is no provision of law either in the Act or in the Rules which impose such an obligation on the department.—**BERAR OIL INDUSTRIES AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES** [1959] 10 S.T.C. 199 (A.P.).

Tax on purchase of groundnuts—Whether provisions contravene Article 276(2)—Fixation of tax on purchase by rules—Whether amounts to abdication of legislative power.—The levy of tax on the purchase of groundnut at the rates prescribed by the Madras General Sales Tax Act, 1939, is not in contravention of the provisions of Article 276(2) of the Constitution of India. The tax levied under the Act is a tax on the transaction of sale. It is not a tax on trade or for the privilege of trading. It is a tax on a transaction and that is its pith and substance. The incidence of the tax is wholly irrelevant for considering its substance or nature. A tax on a transaction such as provided by entry 48 in List II of the Government of India Act, 1935, has necessarily to be laid upon some person concerned in the transaction and this feature cannot render it other than tax upon a transaction. Therefore the fact that the total amount of the tax payable by an assessee on the purchase of groundnuts exceeds the limit fixed by Article 276(2) of Constitution does not render it invalid. The tax levied on the purchaser of groundnuts by reason of the provisions of rule 4(2) of the Turnover and Assessment Rules was not constitutionally invalid on the ground that the Act itself furnished no criteria for determining

the goods whose turnover was to be assessed in the hands of a seller as distinguished from those in which it was to be assessed in the hands of the buyer and that the delegation of such a power to the rule-making authority was excessive and amounted to an abdication of legislative power. The Turnover and Assessment Rules were also not invalid on the ground that there was failure to observe the provisions relating to the promulgation of the rules. There is no impropriety, unconstitutionality or irregularity in the terms of the proviso to section 3(2), as it originally stood, by which the power of approval of the rules is confined to the Legislative Assembly of the State Legislature.—**K. G. RANGASWAMI CHETTIAR AND CO. v. THE GOVERNMENT OF MADRAS** [1957] 8 S.T.C. 222 (Mad.).

Tax on purchase turnover—Entrustment of groundnuts for decortication and advances taken—Sale of groundnuts after decortication and discharge of loan—Transaction, whether purchase—Lender of loan, whether dealer.—See under **DEALER**.

Turnover—Determination of turnover of dealer in groundnut and groundnut oil—Proviso to section 3(4) of the Mysore Act—Whether valid.—See **SREERANGIAH SETTY & SONS v. COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR, AND ANOTHER** [1962] 13 S.T.C. 314 (Mys.).

Groundnuts—"Mill" and "manufacture"—Meanings of—"Miller" in item 3-C, column (2), Schedule IV, Andhra Pradesh General Sales Tax Act (VI of 1957)—Whether includes both decortivating miller and oil miller.—Having regard to the meanings which, according to their common usages are given to the words "mill" and "manufacture" and even according to their dictionary meanings, the word "miller" appearing in item 3-C of column (2) of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, would mean both the decortivating miller and the oil miller. The legislative history also indicated that the Legislature had used the word "miller" in the provision to include both the decortivating as well as oil miller.—**Y. ASWATHANARAYANA AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, KADIRI, AND OTHERS** [1964] 15 S.T.C. 795 (A.P.).

Groundnut—Stage of levy of tax—"When purchased by a miller"—Meaning of—Whether miller should crush groundnut into oil to make him liable to tax.—Under the Andhra Pradesh General Sales Tax Act, 1957, after 1st October, 1961, groundnuts were liable to tax when purchased by a miller at the point of purchase by such miller—and after 1st August,

1963, by a miller other than a decorticating miller—and in all other cases at the point of purchase by the last dealer who bought in the State: *Held*, that with regard to purchases by millers who owned or worked groundnut oil mills, the words “when purchased by a miller” referred to the purchase by the first miller irrespective of the fact whether the said miller retained the goods either wholly or in part for the purpose of crushing or whether he merely sold them as an ordinary dealer. It was not the duty of the taxing authority to examine as to what he did with the stock or to wait till he thought of crushing them into oil. The second limb of column 2 of item 6 of the Third Schedule referred to dealers simpliciter and the Legislature never contemplated miller figuring as a mere dealer. The said limb could come into operation only in cases other than those covered by the first limb and therefore the interpretation put on the item did not come in conflict with section 15 of the Central Sales Tax Act, 1956. *Syed Mohamed & Co. and Another v. The State of Madras* [1952] (3 S.T.C. 367), *Mohamed Zackria and Co. v. Government of Madras* [1954] (5 S.T.C. 399) and *The State of Madras v. K. H. Chambers Ltd.* [1955] (6 S.T.C. 157) distinguished. *Berar Oil Industries v. The Deputy Commissioner of Commercial Taxes, Anantapur* [1959] (10 S.T.C. 199), *Hajee Abdul Shukoor and Co. v. State of Madras* [1955] (6 S.T.C. 352) and *Aswathanarayana v. The Deputy Commercial Tax Officer* [1964] (15 S.T.C. 795) referred to.—*THE STATE OF ANDHRA PRADESH v. LAKSHMI OIL MILLS, BHONGIR, AND OTHERS* [1967] 20 S.T.C. 489 (A.P.).

Groundnuts—Purchase tax—Sale by decorticating miller to crushing miller—Payment of tax by crushing miller—Whether power to tax comes to an end—Whether tax can be levied on decorticating miller.—The assessee, a dealer in groundnuts, purchased groundnuts and decorticated them into kernel in a factory taken by him on lease and sold the kernel to crushing millers. For the year 1962-63, groundnuts were liable to tax under item 3-C of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, “when purchased by a miller in the State at the point of purchase by the miller, and in all other cases at the point of purchase by the last dealer who buys it in the State.” The question was whether tax could be levied on the assessee on the purchases of groundnuts. The assessee contended that he was not liable to pay tax because the crushing millers, who purchased groundnuts from him, had already paid the tax for which he sought to adduce evidence in the form of affidavits. The Commercial Tax Officer rejected the contention of the assessee and held

that “tax has to be collected at the right point of levy and from the right person only notwithstanding the fact that some other dealers paid tax.” *Held*, that while the Act as it stood originally regarded the first purchase as the point of tax on groundnuts, and the Amending Act of 1959 shifted the point to the last purchase, the Amending Act of 1961 did not fix any point for taxation. Therefore if the taxing authority levied the tax from any miller at any particular point of purchase, whether first, second or last, the power to tax came to an end. On a correct reading of item 3-C of Schedule IV, as amended by Act 26 of 1961 read with section 6 of the Andhra Pradesh General Sales Tax Act, 1957, there was no scope for any distinction between the first purchase and the last purchase among the millers who purchased groundnuts. Therefore if tax was collected from the crushing millers, who purchased the groundnuts from the the assessee, tax could not be collected again from the assessee. *Y. Aswathanarayana and Others v. Deputy Commercial Tax Officer, Kadiri, and Others* [1964] (15 S.T.C. 795) referred to.—*JOWLI SUNKIAH & CO. v. COMMERCIAL TAX OFFICER, NANDYAL, AND ANOTHER* [1968] 21 S.T.C. 300 (A.P.).

Groundnut Oil

Hydrogenated groundnut oil known as vanaspati—Whether groundnut oil.—Groundnut oil subjected to the process of hydrogenation is a different product because its physical qualities differ from that of the original oil and the chemical composition is altered. The word “oil” cannot be construed as including hydrogenated oil. Consequently the benefit of rule 18(2) of the Turnover and Assessment Rules cannot be granted to manufacturers of hydrogenated groundnut oil known as “vanaspati”.—*TUNGABHADRA INDUSTRIES LTD., KURNOOL v. THE COMMERCIAL TAX OFFICER, KURNOOL* [1955] 6 S.T.C. 259 (Andh.). This decision was reversed by the Supreme Court. See below :

—Hydrogenated groundnut oil (commonly called Vanaspati) is “groundnut oil” within the meaning of rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.—*TUNGABHADRA INDUSTRIES LTD. v. COMMERCIAL TAX OFFICER* [1960] 11 S.T.C. 827 (S.C.).

Hydrogenated oil and groundnut oil—Power of Legislature to tax at different rates and ways.—The differentiation made by the Legislature in the Second Schedule to the Mysore Sales Tax Act, 1957, between hydrogenated oil and groundnut oil is not illusory, for, it is only after groundnut

oil undergoes some processes that it becomes vanaspathi. The Legislature can tax at different rates or in different ways, e.g., in regard to incidence or exemption, commodities which can be reasonably differentiated. *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] (11 S.T.C. 827) referred to.—*VENUGOPALASWAMY AND CO. v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, CITY DIVISION, BANGALORE, AND ANOTHER* [1963] 14 S.T.C. 883 (Mys.).

Manufacturer of groundnut oil—Registration under rule 18, Turnover and Assessment Rules—Failure to furnish monthly statement and particulars—Whether can be condoned by officer.—The effect of sub-rule (1) of rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is that it is within the discretion of the manufacturers of groundnut oil and cake to get themselves registered as such manufacturers and once such registration takes place, the manufacturers become entitled to the deductions. The combined effect of sub-rule (3) and sub-rule (3A) of rule 18 is not such as to defeat this right which is given to the manufacturer of oil and cake under sub-rule (2) of rule 18. If the manufacturer has maintained a true and correct account of his business showing all the particulars required by sub-rule (3), the failure to furnish the statement under sub-rule (3) will not disentitle him from claiming deduction which he is entitled to, especially in view of what is contained in sub-rule (3A), that the failure or the delay can be condoned by the taxing officer. Therefore, in so far as the relevant parts of rule 5(1)(k) or rule 18 are only intended to regulate the procedure that has to be kept in view by the taxing authority in arriving at the net turnover of the assessee or dealer, the legal effect of these rules could be nothing beyond their being merely directory and not absolute. Under sub-rule (3A) of rule 18, the Commercial Tax Officer has not only the power to condone the mere delay in the submission of the returns in Form A9 from month to month or the omission of the particulars to be mentioned in Form A9, but he has also the power to condone any total failure to submit the statement or the particulars required in that statement. The assessee was a dealer in groundnut oil and cake and he was also registered as manufacturer of groundnut oil and cake under rule 18(1) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. During the relevant year the assessee did not submit the monthly returns as required by rule 18(3) but the Deputy Commercial Tax Officer did not insist upon the fulfilment of the requirement of that sub-rule while provisionally assessing the assessee to sales tax: *Held*,

that the action of the officer must be deemed to have been a condonation under sub-rule (3A) of the total failure on the part of the assessee to submit the statement or the particulars in Form A9 required by sub-rule (3) and the assessee could not subsequently be deprived of the benefit of the exemption under rule 18(2). The Madras General Sales Tax Act, 1939, and the rules framed thereunder being of the nature of a fiscal legislation, unless there is a specific provision to the effect that the exemptions and concessions that are intended by the specific language of the rules of the enactment could not be availed of by the assessee unless and until the assessee complies with every one of the requirements, it will not be legal or within the rules of proper interpretation of the statutory enactment to infer that the assessee should be penalised and should be deprived of the benefits given to him as a substantial right. The Madras General Sales Tax Act being a fiscal enactment and the rules framed thereunder also partake of the same character, the words in the statute should be strictly adhered to and no construction such as would favour the Government as against the subject should be put thereupon.—*THE STATE OF MADRAS v. HAJEE M.S.A. MEERAN SAHIB CO.* [1954] 5 S.T.C. 71 (Mad.).

—Rebate for month previous to month of registration—Whether allowable.—The assessee, who was registered under rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, on 3rd March, 1951, submitted a return in Form A-9, as required by sub-rule (3) of rule 18, giving particulars of the transactions of the month previous to the month of registration, i.e., February, and claimed the rebate permissible under rule 18(2). The departmental authorities refused the rebate on the ground that under rule 18(2) the rebate could be claimed only from the date of registration and not for the month of February: *Held*, that sub-rule (2) and sub-rule (3) of rule 18 have to be read together, and, in reading sub-rule (3), Form A-9, which has been specifically referred to in sub-rule (3), has also to be read with it. The assessee was therefore entitled to claim the rebate for the month of February.—*THE STATE OF MADRAS, In re* [1954] 5 S.T.C. 161 (Mad.).

—Rebate for month previous to month of registration—Whether allowable.—Although the words “every such manufacturer” in sub-rule (3) of rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, refer only to a dealer who has registered himself as a manufacturer of groundnut oil and cake, once a dealer has registered

himself as a manufacturer under sub-rule (1) of rule 18, he is entitled under sub-rule (3) to present the application for the month even prior to the month of registration. Form A-9 is in itself an application for rebate and under sub-rule (3) that application can be made for the previous month. The rule itself nowhere says that the deduction can be claimed only in respect of the period which is subsequent to the month of registration. The contention that registration being a necessary condition for getting exemption, the benefit of the exemption cannot relate to a period previous to the month of registration is not borne out by the language or intentment of sub-rule (3). Moreover in respect of the period which is anterior to the period mentioned in sub-rule (3), the manufacturer can apply to the competent authority who, in his discretion, can condone the delay or omission or both under sub-rule (3A). The decision of the Madras High Court in *The State of Madras, In re* [1954] (5 S.T.C. 161; (1954) 1 M.L.J. 669) gives proper effect to the relevant statutory provisions.—*SRI SITHARAMA RICE AND OIL MILLS v. THE STATE OF ANDHRA* [1956] 7 S.T.C. 635 (A.P.) (F.B.).

—See also *T. P. VARIATH v. THE BOARD OF REVENUE AND ANOTHER* [1956] 7 S.T.C. 12 (Trav.-Co.) where the same point is dealt with in the case of a manufacturer of cocoanut oil (page 268 *supra*).

—*Registration after completion of manufacture—Right to deduction.*—The assessee was a manufacturer of groundnut oil but he was not a registered manufacturer at the time of the manufacture or at any time during the accounting period 1951-52. The application for registration was filed on 14th February, 1953, and the registration was granted on 15th February, 1953: *Held*, that it is impossible to say that any oil manufactured by a dealer, who was unregistered at the time of the manufacture, is none the less oil manufactured by a registered dealer simply because the dealer chose to obtain a certificate of registration subsequent to the completion of the manufacture and therefore the assessee was not entitled to the deduction under rule 20(2) of the Travancore-Cochin General Sales Tax Rules, 1950.—*K. V. JOSEPH v. SALES TAX OFFICER, SECOND CIRCLE, ALLEPPEY, AND OTHERS* [1957] 8 S.T.C. 336 (Ker.).

—*Conditions for claiming rebate under rule 18.*—The two essential conditions for claiming the rebate under rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, are that the assessee must have been registered as a manufacturer of groundnut oil and cake and that he should submit a statement in Form No. A-9

within the prescribed time. An assessee would be entitled to the rebate once he has fulfilled the conditions specified in rule 18, notwithstanding the fact that he was later found not to have maintained correct accounts or suppressed the turnover. The proviso to sub-rule (3A) of rule 18 is only concerned with the question of condoning the delay in submitting the return. *Sri Sitharama Rice and Oil Mills v. The State of Andhra* [1956] (7 S.T.C. 635; A.I.R. 1957 A.P. 164) referred to.—*THE STATE OF ANDHRA PRADESH v. SRI SITHARAMANJANEYA RICE, GROUNDNUT AND FLOUR MILL, ANANDAPURAM* [1962] 13 S.T.C. 31 (A.P.).

—*Sale of oil outside State—Rebate of tax on purchase turnover.*—The assessees, who were registered manufacturers of groundnut oil, purchased groundnuts and extracted oil from them but sold the oil outside the State. They were taxed on the turnover of the purchase price. They claimed that as the oil was sold outside the State and as that sale was exempted from taxation under Article 286 of the Constitution, they were entitled to claim a rebate of the tax they paid on the purchase turnover, in respect of the groundnuts from which they extracted the oil, under rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules: *Held*, that the assessees were not entitled to the rebate. The exemption under rule 18(2) is based upon the principle that on the same commodity the dealer should not be called upon to pay the tax twice over. If he had already paid tax on the purchase turnover, and if he converted those groundnuts into oil and sold the oil, on the sale turnover of the oil which includes the purchase price of the groundnuts, he should not again be called upon to pay the tax. This deduction is allowed in order to avoid double taxation and it is based on the assumption that otherwise the entire turnover of the sale of the oil would be liable to tax. If the assessees were exempted from paying tax on the sale turnover of the oil as the sale was outside the State, they could not claim the benefit of the deduction under rule 18(2).—*SRI CHNDRAMOULESWARA OIL CO., KURNOOL, AND ANOTHER, In re* [1954] 5 S.T.C. 340 (Mad.).

—*Purchase of groundnut outside State—Claim to deduct purchase price from sale price of oil.*—Under rule 18 of the Turnover and Assessment Rules, 1939, read with rule 5(1)(k) an assessee is not entitled to deduct the purchase price of groundnut or groundnut kernel if the purchases are made outside the taxable territory. The scheme of taxation in respect of groundnut oil is not to provide for any special concession for the manufacture and sale of the groundnut oil as such. The

scheme is that when a registered manufacturer of oil purchases groundnut and pays tax under rule 4(2) on the purchase of that groundnut, if he subsequently converts that groundnut into oil and sells the oil, he would normally be liable to further sales tax on the sale turnover of that oil but for rule 18(2). Therefore, if he has already paid the tax on the purchase of groundnut which was subsequently converted into oil he is given a deduction under rule 18(2) read with rule 5(1)(k). The deduction is allowed only where the purchase has been made subject to tax under the Sales Tax Act. If the purchases were made outside the State, these purchases would not come within the scope of rule 4(2), and rule 18(2) would not also apply to the turnover of oil extracted from such groundnut.—*SREE RADHAKRISHNA GROUNDNUT OIL MILL v. THE STATE OF MADRAS (NOW ANDHRA)* [1954] 5 S.T.C. 357 (Mad.).

—*Sale of oil outside State—Right to deduction under rule 18(2).*—Rule 18(1) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, provided: “Any dealer who manufactures groundnut oil and cake from groundnut and/or kernel purchased by him may, on application.....be registered as a manufacturer of groundnut oil and cake.” Sub-rule (2) provided: “Every such manufacturer shall be entitled to a deduction under clause (k) of sub-rule (1) of rule 5 equal to the value of the groundnut and/or kernel purchased and converted by him into oil and cake provided that the amount for which the oil is sold is included in his turnover.” The assessee, a registered manufacturer of groundnut oil from groundnut purchased by him, sold the oil so manufactured outside the State and he was not taxed by reason of the provisions of Article 286 of the Constitution. The question was whether the assessee was entitled to the deduction under rule 18(2): *Held*, that as the assessee had not paid tax on the sale of oil outside the State, the value of it should not be taken into account for the purpose of computing the turnover entitled to the deduction under rule 18(2). Both the decisions in *Chandramouleswara Oil Co., In re* [1954] (5 S.T.C. 340; (1954) 2 M.L.J. 187) and *Radhakrishna Groundnut Oil Mill v. State of Madras* [1954] (5 S.T.C. 357; (1954) 2 M.L.J. 550) correctly interpret the relevant provisions of the Sales Tax Act. The provision in rule 18(2) does not levy a tax but provides an exemption and therefore the principle that in case of ambiguity a taxing statute should be construed in favour of the taxpayer does not apply to the construction of rule 18(2). The basic idea of the concession granted by rule 18(2) being a rebate was clearly brought out by the terms of that rule in the form in which it

stood when it was introduced in 1941. The change in the language of the rule, by which the expression “rebate” was eliminated from the rule, while it still appeared in Form A-9, did not make any difference in the scope or effect of the concession. This was merely a drafting device which was necessitated to bring it in conformity with the provision of rule 5(1)(k) introduced in 1944. As the concept of the concession was “rebate”, the deduction was from the tax paid, which necessarily posited the previous payment of the tax.—*K. G. RANGASWAMI CHETTIAR AND CO. v. THE GOVERNMENT OF MADRAS* [1957] 8 S.T.C. 222 (Mad.).

—*Sale of oil—Sales falling under section 3(b), Central Sales Tax Act, 1956—Right to claim rebate.*—Where the assessee was a registered manufacturer of groundnut oil but the transactions relating to sale of groundnut oil could not be brought to tax for the reason that they fell within the purview of section 3 of the Central Sales Tax Act, 1956, and were therefore to be excluded from the turnover: *Held*, that as the transactions were not subjected to tax, there would be no occasion to claim a rebate under rule 5(1)(k) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and the department was not under an obligation to levy a tax on the sales so that the assessee could claim the rebate. The purpose of enacting rule 25 of the Andhra Pradesh General Sales Tax Rules, 1957, corresponding to rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is to avoid double taxation and not for the purpose of enabling the assessee to make a profit out of the transaction. Where the assessee despatched goods by rail, obtained railway receipts in his own name and when the goods started on their journey to another State endorsed the railway receipts in favour of the buyer after receiving the sale price from him: *Held*, that as the transfer was effected during the movement of the goods, the sale fell within the purview of section 3(b) of the Central Sales Tax Act, 1956, and could not be taxed by the department.—*VEMULA SESHIAH AND GONGADI RAMAPPA v. THE STATE OF ANDHRA PRADESH* [1963] 14 S.T.C. 730 (A.P.).

—*Deduction under rule 18—Discretionary power of officer.*—The assessee claimed to deduct from his turnover under rule 18, Madras General Sales Tax (Turnover and Assessment) Rules, 1939, of a sum of Rs. 19 lakhs, which was included in the returns submitted in Form A-9. The Commercial Tax Officer declined to consider the claim on the ground that all the particulars required in Form A-9 had not been furnished. On appeal the

Appellate Tribunal held that under rule 18 (3A) the Commercial Tax Officer had ample jurisdiction to condone the delay in the submission of the form or to condone the failure to furnish any of the particulars in that form, and after pointing out that the accounts had been maintained correctly and that the quantities of oil could always be gathered with accuracy from the information furnished by the assessee, directed the Commercial Tax Officer to consider the assessee's claim for deduction of turnover under rule 18. Against this order the Government preferred a revision: *Held*, that what the Tribunal pointed out was that the discretion was vested in the Commercial Tax Officer but the exercise of that discretion was not judicious. There was nothing wrong in the exercise of the jurisdiction of the Appellate Tribunal and they had jurisdiction to pass the order they did.—*THE STATE OF MADRAS v. SRI RAMAKRISHNA RICE AND OIL MILLS* [1954] 5 S.T.C. 397 (Mad.).

—*Deduction under rule 18(2)—Whether should be restricted to actual purchase value of groundnut.*—Under the second proviso to rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the deduction which a manufacturer of groundnut oil is entitled to claim has to be restricted to the actual purchase value of the groundnut from which the oil sold was extracted. It is not the notional value of the turnover of groundnut worked out in accordance with the formula given in the explanation to rule 18(2) and rule 18(4) that should be adopted in granting the deduction.—*SARADHA OIL MILLS v. THE STATE OF MADRAS* [1962] 13 S.T.C. 217 (Mad.).

—*Conditions specified in rule 18 and section 17—Whether mandatory.*—If any assessee is to claim the benefit given to him under the sections of the Madras General Sales Tax Act or the Rules, he should comply with the conditions and terms specified in the rules before he could really claim the benefit given to him. If it was the intention of the Legislature that these rights should be exercised by the assessee irrespective of their doing anything on their part in order that the assessing authorities may be in possession of full particulars and details of the transactions which the assessee carries on, nothing could have prevented the Legislature to enact the law in that form. Not having done so, it cannot be said that these substantive rights are not affected by what are contained in the rules framed under the rule-making power vested in the Government. The very purpose of rule 5(1)(k) of the Madras General Sales Tax (Turnover and Assessment) Rules is that the amounts can be deducted by the

assessee from his turnover only if the conditions specified in rule 18 are satisfied and these conditions are specific and definite. One is that the manufacturer should be a registered one; secondly, he should include the amount for which oil is sold in his turnover; thirdly, he should submit on or before the 25th day of every month a statement in Form A-9 in respect of the transactions relating to the previous month and he should also mention in that form the aggregate amount of groundnut and/or kernel purchased by him and the total purchase price, the total quantity of groundnut oil manufactured, the amount for which it was sold and the amount included in the turnover. Though a substantive right is given to the assessee to claim deduction in respect of the value of the oil manufactured and sold, still this substantive right is not independent of the conditions laid down in rule 18. If therefore an assessee failed to comply with the conditions mentioned in that rule, he will not be entitled to claim the deduction. [The assessment in this case related to a period prior to the coming into force of rule 18(3A)]. Although a similar substantive right is given to an assessee by section 7 it cannot be said that that substantive right stands by itself without being qualified by what is contained in rule 9 of the Madras General Sales Tax Rules, 1939. Therefore if an assessee claimed a rebate under section 7 he should make an application in Form No. VIII within three months of the delivery of the articles outside the State.—*THE STATE OF MADRAS v. NALLAM JAGGIAH* [1954] 5 S.T.C. 457 (Mad.).

—*Deduction under rule 18(2)—Whether conditions directory or mandatory.*—The language of rule 18(3) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is absolute and peremptory and therefore in the case of a registered manufacturer of groundnut oil and cake the deduction referred to in rule 18(2) is conditional upon the assessee complying with the conditions prescribed under rule 18(3).—*THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES v. SRI PENTAPATY LAKSHMANA SWAMY* [1956] 7 S.T.C. 560 (Andh.) (F.B.).

—*Delay in filing of application in Form A-9—Condonation of delay—Whether an application should be filed—Nature of discretion vested in the officer.*—Where a power is vested by a statute in a public authority with a discretion restricted or otherwise, it is meant for exercise and the exercise of the power cannot be refused either capriciously or arbitrarily. Sub-rule (3) of rule 18-A of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, confers power upon the

Commercial Tax Officer to excuse delay, in his discretion, in submitting the application in Form A-9. The discretion of the officer, however, has got to be exercised in the manner provided by the sub-rule. The officer can refuse to exercise the power only if the conditions for the exercise are not fulfilled or satisfied. The sub-rule does not require an application by the assessee to exercise the power to condone the delay. It is the duty of the officer to condone the delay himself unless he thinks that the delay was with a *mala fide* intention or the assessee had not maintained true and correct accounts in relation to the particulars required in Form A-9.—K. SENGODAN AND CO. v. STATE OF MADRAS [1967] 20 S.T.C. 415 (Mad.).

Non-production of accounts—Whether rebate can be disallowed.—Non-production of accounts before the assessing authority by a manufacturer of groundnut oil registered under rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, would entail the rejection of the claim for rebate provided by that rule even where the dealer was being assessed on the basis of his monthly returns.—GOWLI NAGAPPA v. STATE OF ANDHRA PRADESH [1963] 14 S.T.C. 42 (A.P.).

Rebate—Withdrawal of rebate as regards refined oil—Legality.—Whether offends Article 14, Constitution.—BERAR OIL INDUSTRIES AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, ANANTAPUR [1959] 10 S.T.C. 199 (A.P.) (page 506 *supra*).

—Groundnut oil—withdrawal of rebate to refined oil by amending rule—Whether violative of Article 14, Constitution.—TUNGABHADRA INDUSTRIES LTD. v. STATE OF ANDHRA PRADESH [1966] 17 S.T.C. 366 (A.P.) (page 507 *supra*).

Rule 18(3A) of Turnover and Assessment Rules—Whether retrospective in operation.—Sub-rule (3A) to rule 18 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, introduced on 10th February, 1949, empowering the Commercial Tax Officer to condone the delay in filing the return as required by sub-rule (3), related to procedure and was therefore retrospective in its operation. Consequently so long as the assessment was not completed the Commercial Tax Officer had ample power or discretion, even in respect of returns which should have been submitted before 10th February, 1949, to condone the delay in submitting the return or the omission to submit the return at all.—THE STATE OF MADRAS v. N. R. KUPPUSWAMI GOUNDER AND SONS [1954] 5 S.T.C. 159 (Mad.).

Scope of the Rules.—Under rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, read with rule 5(1)(k) the deduction to which an assessee is entitled is the value of the groundnut from which he produced the oil. The total turnover of the oil should be taken into consideration and from that, the value of the groundnuts which he purchased, must be deducted.—THE STATE OF MADRAS v. MESSRS RALLI BROTHERS LTD., MADRAS [1954] 5 S.T.C. 395 (Mad.).

Vanaspati—Groundnut oil, whether component part of vanaspati—“Identifiable”, meaning of—Delay in furnishing declaration forms owing to failure of authorities to supply forms in time—Whether delay can be condoned—Production of vanaspati from groundnut oil—Whether amounts to manufacture.—Where the petitioners selling groundnut oil to manufacturers of vanaspati were not supplied with the necessary declaration forms in time to comply with the requirements of rule 22 of the Madras General Sales Tax Rules, 1959, owing to the failure of the assessing authority to supply the forms to the manufacturers in time, any delay in furnishing the declaration forms by the petitioners to the assessing authority for getting the concessional rate of tax under section 3(3) of the Madras General Sales Tax Act, 1959, should be condoned. Vanaspati is nothing other than groundnut oil in a more suitable and stable form, the process of manufacture only endowing it with qualities which would resist natural decay and deterioration. In producing the vegetable product known as vanaspati, a process of manufacture is involved and vegetable oils such as groundnut oil and til oil are used for the purpose of that manufacture. The expression “identifiable” in the explanation to section 3(3) of the Madras General Sales Tax Act, 1959, does not merely connote visual identity. As the presence of groundnut oil in vanaspati can be chemically identified and even quantitatively estimated, groundnut oil is “an identifiable constituent” of vanaspati within the meaning of that explanation. An explanation which only purports to explain what the main provision means must be regarded as retrospective in its scope. *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] (11 S.T.C. 827) explained.—R. M. KRISHNASWAMY NAIDU & SONS AND OTHERS v. THE STATE OF MADRAS [1965] 16 S.T.C. 671 (Mad.).

—See also COMMERCIAL TAX OFFICER, SALEM v. METTUR CHEMICAL AND INDUSTRIAL CORPORATION AND ANOTHER [1965] 16 S.T.C. 281 (Mad.) and [1964] 15 S.T.C. 734 (Mad.).

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HIDES AND SKINS

Classification into licensed and unlicensed dealers—Whether offends Article 14 of the Constitution.—See page 494 *supra*.

—Unlicensed dealers escape taxation because of imperfect draftsmanship—Taxation of licensed dealers—Whether amounts to discrimination.—V. S. K. ADHI CHETTIAR SURAVELU CHETTIAR v. STATE OF MADRAS [1957] 8 S.T.C. 274 (Mad.).

—New rule 16(2), Madras Turnover and Assessment Rules—Whether discriminates against hides and skins imported from other States.—FIRM A. T. B. MEHTAB MAJID & Co. v. STATE OF MADRAS [1963] 14 S.T.C. 355 (S.C.).

—See also ABDUL SUBHAN & Co. v. THE STATE OF MADRAS AND ANOTHER [1960] 11 S.T.C. 173 (Mad.).

—Madras General Sales Tax (Special Provisions) Act (11 of 1963)—Whether sec. 2(1) discriminates against hides and skins imported from other States—Raw and dressed hides and skins—Whether different commodities.—A HAJEE ABDUL SHUKOOR & Co. v. STATE OF MADRAS [1964] 15 S.T.C. 719 (S.C.).

—See also P. HAJEE ABDUL WAHAB AND SONS AND ANOTHER v. THE GOVERNMENT OF MADRAS [1966] 17 S.T.C. 284 (Mad.).

—*Licensed and unlicensed dealers—Single point and multi-point tax—Whether provisions of Act discriminatory.*—Discrimination can arise only when the like are not treated alike. There can be no comparison between licensed and unlicensed dealers in hides and skins with reference to tax liability. If an unlicensed dealer is not getting the benefit of single point taxation and a licensed dealer gets that benefit it is not because the provisions of the Act themselves made any discrimination but because of the failure of the dealer to comply with the requisites for getting that concession. An unlicensed dealer in hides and skins who is denied the benefit of single point taxation cannot therefore challenge the provisions of the Act as being discriminatory. *State of Madras v. Noor Mohammed & Co.* [1960] (11 S.T.C. 570) referred to.—*H. H. NAEEMS AND COMPANY v. THE STATE OF MADRAS* [1964] 15 S.T.C. 269 (Mad.).

—The inhibition under Article 14 of the Constitution is only that the State shall not discriminate. Further the requirements of equal protection is only that like should be treated alike. As the differential burden brought about in the scheme of taxation of hides and skins is not because of the provisions of the Act themselves but because of

the failure of one or the other dealers in the series of transactions of hides and skins to take out a licence, the provisions of the Act cannot be challenged as discriminatory. *H. H. Naeems and Company v. The State of Madras* [1964] (15 S.T.C. 269) followed.—*HABIBUNNISSA v. STATE OF MADRAS AND OTHERS* [1964] 15 S.T.C. 271 (Mad.).

Compulsory licensing provisions—Power of rule-making authority to fix single point with retrospective effect.—The word “prescribed” in the Madras General Sales Tax Act, 1939, merely means “by rules made under the Act” and is wholly unconcerned with the content of the rule in relation to the time from which it shall operate which is determined by other considerations. The use of the word “prescribed” in section 5(vi) did not therefore impose a restriction on the rule-making authority confining its power to fixing a single point only for the future. Even if section 5(vi) did not authorise the rule-making authority to prescribe a tax point with retrospective effect the State Government had, by enacting section 9 of Madras Act 1 of 1957, put the matter beyond the possibility of any such objection. The provisions of section 9 of Madras Act 1 of 1957 were not obnoxious to Article 14 of the Constitution. Rule 16 of the Turnover and Assessment Rules as it stood before the amendment contained an undesigned lacuna of which unlicensed dealers had taken advantage of and no person had any vested or fundamental right to the continuance of a lacuna and such a person could not with any justice complain that any of his rights was violated when that gap was closed. Rule 16, as framed, satisfied the requirements of section 5(vi) of the Act regarding the prescription of a single point for the levy of tax on hides and skins, whether tanned or untanned, and was therefore valid. The right to pass on the tax is not an essential requirement of a tax on the sale of goods for a tax might be levied at the stage of the last purchase before consumption.—*V. GURUVIAH NAIDU AND BROTHERS v. THE STATE OF MADRAS AND ANOTHER* [1958] 9 S.T.C. 145 (Mad.).

Dealer paying provisional fee and obtaining licence—Whether can refuse to pay balance of fee and claim to be assessed as unlicensed dealer.—See *KHUDRATHULLA & Co. v. STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 595 (A.P.).

Essential commodity—Tax on hides and skins—Whether contravenes Article 286(3).—Clause (3) of Article 286 of the Constitution of India did not affect pre-Constitution laws. As the Mysore Sales Tax Act under which tax was levied on hides and skins was a pre-Constitution law, it was

exempted from the requirement of the President's assent under Article 286(3) for being effective.—**ABDUL RAHMAN v. STATE OF MYSORE AND ANOTHER** [1957] 8 S.T.C. 205 (Mys.).

—See also **PALANIAPPA CHETTIAR AND CO. AND OTHERS v. THE DEPUTY COMMERCIAL TAX OFFICER, MOORE MARKET DIVISION, MADRAS** [1959] 10 S.T.C. 171 (Mad.).

“Law imposing tax” meaning of—Whether rules 15 and 16 of Madras General Sales Tax (Turnover & Assessment) Rules, 1939, law imposing tax.—See **SREENIVAS & CO. v. DEPUTY COMMERCIAL TAX OFFICER** [1960] 11 S.T.C. 68 (Mad.).

Provisional assessment—Dealer in hides and skins—Submission of monthly returns but failure to remit tax along with returns—Consolidated assessment and demand at the end of year—Whether precluded by rules.—The assessee, a dealer in hides and skins, submitted monthly returns of turnover in Form A-4 as required by rule 15(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. He however failed to remit with each of the monthly returns the tax payable on the turnover for the previous month as required by that sub-rule. The departmental authorities did not take immediate action, as they were entitled to under sub-rule (4), but at the end of the year the total turnover of the year was ascertained and the tax due was computed and demanded. The assessee contended that he could be assessed only in the manner provided by rule 15(4) and that the assessment made by the authorities was therefore invalid: *Held*, that under the Act, the basic rule is that sales tax is a tax based on the annual turnover of every dealer and rule 15 is not to be understood as a departure from this provision. The several sub-rules of that rule have to be understood as providing for provisional assessments and the payments of the provisional amounts of the tax have all to be adjusted at the end of the year. Therefore a consolidated assessment and demand by the authorities at the end of the year was not precluded by rule 15 and the assessment made by them was valid. The rules as amended by notification dated 26th February, 1954, only clarify what was already implicit in the rules as they stood before the amendment.—**P. ABDUL MATHEEN v. THE DEPUTY COMMERCIAL TAX OFFICER, AMBUR, AND ANOTHER** [1957] 8 S.T.C. 825 (Mad.).

Formation of Andhra State—Whether dealer entitled to concession of single point taxation in respect of sales to dealers in Madras after formation of Andhra State.—The fact that after the formation of the Andhra State, by virtue of section 53 of the

Andhra State Act, 1953, the same set of laws continued to be operative both in the States of Madras and Andhra does not support the contention that a dealer in hides and skins holding a licence for 1953-54 is entitled to the benefit of single point taxation even in regard to sales to dealers in Madras State after 1st October, 1953. After the emergence of the State of Andhra the privileges attached to the licence issued to a dealer are confined to the territory of Andhra.—**Sundararamier & Co. v. State of Andhra Pradesh** [1958] (9 S.T.C. 298) referred to.—**SRI PEERA MOHAMMAD MAHAMOOD SAHEB v. THE STATE OF ANDHRA PRADESH** [1960] 11 S.T.C. 456 (A.P.).

Dealer in tanned hides and skins—Purchase of tanning materials for use in the process of tanning—Liability to tax on purchase turnover of tanning materials.—The definition of “dealer” in section 2(g) of the Madras General Sales Tax Act, 1959, would include a person who merely carries on a business of buying goods. But the buying of goods must be in the course of business which means that the activity should be associated with a profit-making motive. It is however not necessary that the dealer who bought the goods should sell them as such. It may be that the dealer is engaged in the production of goods in the course of which the goods which he purchased are utilised and converted into other goods or the goods bought are necessary ingredients in the manufacture of the goods sold. In an integrated transaction of that nature it cannot be said that the purchase is devoid of the profit-motive. If the goods purchased by a dealer are utilised for the purpose of improvement of other movable properties which he sells, reading the definitions of “dealer” and “goods” together, it should be said that the purchase itself is in the course of the business, whether the identical goods purchased are sold or not. That part of the definition of the expression “goods” in the Act which includes materials to be “used in the fitting out, improvement or repair of movable property” is clearly intended to cover cases where the goods are those not sold but are utilised in other processes resulting in a product which the dealer sells. The assessee was dealer in tanned hides and skins. They were assessed to tax under the Madras General Sales Tax Act, 1959, on a certain sum representing the purchase value of tanning materials which were liable to tax at the point of last purchase in the State under item 59 of the First Schedule to the Act. The assessee contended that they were not dealers in tanning materials, that the tanning materials had been consumed in the course of tanning the raw hides and that unless it was

found that they sold the tanning materials as such they could not be regarded as dealers in tanning materials and they were therefore not liable to pay tax: *Held*, that the assessee were dealers in tanning materials and were rightly assessed to tax on the purchase value of the tanning materials. The use of the tanning materials in the tanning process contributes to the making of profit as a dealer and it should therefore follow that even the business of purchasing the tanning materials involves the profit-motive. If the existence of that profit-motive in entering into the transaction brings the series of transactions within the expression "in the course of business", the process of buying has the profit-motive as a necessary ingredient. *H. Abdul Bakshi & Brothers, Hyderabad v. The State of Andhra Pradesh* [1960] 11 S.T.C. 526 dissented from.—*L. M. S. SADAK THAMBY AND CO. v. THE STATE OF MADRAS* [1963] 14 S.T.C. 753 (Mad.).

—Mere purchase of tanning materials for tanning hides and skins of customers for specified charges.—See *FAIZ AHMED & Co. v. STATE OF MADRAS* [1964] 15 S.T.C. 201 (Mad.).

—Business of tanning hides and skins and of selling tanned hides and skins—Purchase of tanning bark for consumption in tannery—Liability to pay tax on purchase turnover of tanning bark.—*STATE OF ANDHRA PRADESH v. ABDUL BAKSHI & BROS.* [1964] 15 S.T.C. 644 (S.C.) reversing [1960] 11 S.T.C. 526 (A.P.).

—*Sale of articles falling under two different categories—Rate of tax—Sale of myrobalam bark to tanners—Whether should be assessed at single point as tanning material.*—The sales of myrobalam bark to tanners should be assessed before 1st October, 1960, at single point as tanning material under item 59 of the First Schedule to the Madras General Sales Tax Act, 1959, inasmuch as tanning is one of the chief uses of myrobalam and the seller as well as the buyer treated it as such. When a commodity is described in the Schedule with reference to the purpose for which it is used, the proper way of interpretation would be to consider first whether that purpose is one of its chief uses, and, secondly, whether the principle laid down by the Allahabad High Court in *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax* [1963] (14 S.T.C. 184) of the intention between the buyer and seller in regard to its use can be taken into account for deciding whether it will fall into one particular category or not. In view of the general way in which the description was given, namely, "dyeing and tanning materials" in item 59 before its amendment on 1st October, 1960, the Court cannot read into

it the meaning that only commodities used exclusively for dyeing and tanning were included in that description. The principle of using a later enactment for clarifying the terms in an earlier enactment can be resorted to only where the earlier enactment is ambiguous or if it is susceptible of two meanings.—*P. PUTHOORVANA RAWTHER, DINDIGUL v. THE STATE OF MADRAS* [1964] 15 S.T.C. 903 (Mad.).

—*Purchase of raw hides and skins in Andhra Pradesh State for tanning in Madras State—Tanning, whether consumption within Explanation to Article 286(1)(a)—Whether purchase tax is leviable.*—The petitioner, a skin merchant having his head office in Madras State and a branch in Hyderabad in the Andhra Pradesh State, purchased in Hyderabad raw hides and skins through his branch and sent them to the head office for the purpose of tanning. In another case, the petitioner's purchasing agent in the Andhra Pradesh State purchased the raw hides and skins and sent them to the petitioner in the Madras State for tanning: *Held*, (1) that the conversion of raw hides and skins into tanned hides and skins is consumption within the meaning of the Explanation to Article 286(1)(a) of the Constitution; (2) that the purchase of raw hides and skins by the petitioner took place in Hyderabad and therefore the petitioner was liable to pay purchase tax under section 6 read with item 6 of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957; (3) that the sale did not occasion the movement of goods from the State of Andhra Pradesh to the State of Madras and they did not come under section 3(a) of the Central Sales Tax Act, 1956.—*SHAFEEQ SHAMEEM AND CO. AND ANOTHER v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1964] 15 S.T.C. 828 (A.P.).

Scheme of taxation of hides and skins.—See *THE STATE OF MADRAS v. EASTERN SUPPLIES LTD.* [1954] 5 S.T.C. 344 (Mad.), *SYED MOHAMED & Co. v. THE STATE OF MADRAS* [1952] 3 S.T.C. 367 (Mad.) and the following cases:—

—*Taxation of purchase price of untanned hides and skins—Subsequent sale without tanning—Assessability.*—Under the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, if a licensed tanner purchases untanned hides and skins from a licensed dealer and then sells it without tanning to another licensed tanner, it would appear that multi-point tax cannot be avoided. But after the return is made by the tanner, showing the amount for which he purchased untanned hides and skins for the purpose of tanning by himself, he changes his mind and exports them, and he happens to be the last dealer who can be taxed,

it will be open to him to claim a refund of the tax already paid on the purchase price as provided by rule 15(5). No hardship therefore would be caused to a tanner if having purchased untanned hides and skins for the purpose of tanning by himself, he subsequently changes his mind and exports them or sells them to others.—*T. K. MOHAMED ZACKRIA & Co. v. THE GOVERNMENT OF MADRAS* [1954] 5 S.T.C. 399 (Mad.).

—*Purchase of untanned hides and skins and subsequent export.*—Rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, provided that “no tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins.....are sold for export outside the State.” The gross turnover of the dealer, however, had to be computed on the amount for which the goods were bought by him under rules 4 and 16(2)(ii): *Held*, that the transaction which attracted tax was the sale for export outside the State and not the purchase by the licensed dealer with a view to export outside the State. The fact that the turnover was computed on a different basis from that of the transaction, which was subjected to tax, was no ground for shifting the stage at which the tax was to be levied from one transaction to the other. The assessee, a licensed dealer in hides and skins, purchased some untanned hides and skins prior to 26th January, 1950, when the Constitution of India came into force and exported the same outside the Indian Union after that date: *Held*, that the sale was exempt from tax under Article 286(1) of the Constitution of India.—*THE STATE OF MADRAS v. RALLIS INDIA LTD.* [1954] 5 S.T.C. 199 (Mad.). This decision was overruled. See [1955] 6 S.T.C. 157 (Mad.) *infra*.

—*Purchase by licensed tanner from unlicensed dealer—Liability to tax.*—Section 3 of the Madras General Sales Tax Act, 1939, is subject, in the case of transactions in hides and skins, to the terms of section 5(vi) under which a single point of taxation in a series of sales has to be fixed by the rules. Rule 4(2) of the Turnover and Assessment Rules does not amount to the fixation of a single point within section 5(vi) but is merely designed to determine whether it is the buyer or the seller that shall be liable to be taxed. The single point is fixed and the liability to tax is established only under rule 16. Under rule 16(2)(i) it is only the sale of untanned hides and skins by a licensed dealer to a licensed tanner who tans the same that gives rise to a tax liability. Purchases of untanned hides and skins by tanners from persons other than licensed dealers

are not within the taxing provision. Therefore in computing the purchase turnover of a licensed tanner only the sales to him from licensed dealers could be included. *Per* RAJAGOPALAN and RAJAGOPALA AYYANGAR, JJ.—If a partner of a firm is not individually licensed under the Act a purchase from him by the firm should be treated as a purchase from an unlicensed dealer. *Mohamed Zackria & Co. v. The Government of Madras* [1954] 5 S.T.C. 399 approved. The observations in *Syed Mohamed and Co. v. State of Madras* [1952] 3 S.T.C. 367 are obiter.—*C. HAJEE ABDUL SHUKOOR AND COMPANY v. THE STATE OF MADRAS* [1955] 6 S.T.C. 352 (Mad.).

—*Purchases by licensed tanner from unlicensed dealer and purchases by licensed dealer for export outside State from unlicensed dealer—Liability to tax.*—Under the Madras General Sales Tax Act, 1939, and the Rules framed thereunder a licensed tanner is not liable to pay sales tax on the amount for which hides and skins were bought by him from an unlicensed dealer. Similarly a licensed dealer who purchases the said goods for export outside the State from an unlicensed dealer is not liable to tax on the amount for which the said goods were bought by him. Section 3 of the Madras General Sales Tax Act, 1939, is the charging section. Section 5 exempts certain commodities from taxation under section 3(1) and gives some concession in regard to other commodities by providing single point taxation instead of multi-point taxation under section 3(1). One of such commodities is hides and skins. Under rule 5(e) of the Madras General Sales Tax Rules, 1939, the accrual of the concession is conditioned by the taking of a licence. If the licence is not taken or renewed, the concession is withdrawn. Rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, says nothing more than that in the case of the said commodity, the amount for which the goods are bought by the dealer is the turnover on which tax is leviable. It does not either in express terms or by necessary implication localise the stage or the transaction in regard to which the tax becomes exigible. That is expressly done by rules 15 and 16, which provide for the levy and collection of taxes. Under these rules the levy of sales tax is on the turnover representing the price for which a licensed tanner or exporter purchases from a licensed dealer. Rule 16, therefore, fixes the stage and levies the tax, where there are a series of transactions between licensed dealers on the last licensed dealer whether he is a tanner or exporter.—*STATE OF ANDHRA PRADESH v. MOHAMMAD AZAM ABDUL BARI & Co. AND OTHERS* [1958] 9 S.T.C. 231 (A.P.) (F.B.).

—*Purchase from unlicensed dealers—Necessity to prove that persons were unlicensed dealers.*—Where the petitioners contended that as they purchased hides and skins from unlicensed dealers, the transaction was exempt from sales tax by virtue of the decision in *State of Andhra Pradesh v. M. A. Abdul Bari & Co.* [1958] (9 S.T.C. 231): *Held*, that there is no presumption that every dealer in hides and skins is an unlicensed dealer and therefore unless the petitioners succeeded in proving that the persons from whom they purchased the hides and skins had no licences, they could not claim the exemption. It is for a person who claims exemption to prove the circumstances which warrant the exemption.—P. ANWAR BADSHA SAHIB AND CO., VIZIANAGARAM, AND ANOTHER v. THE STATE OF ANDHRA PRADESH [1958] 9 S.T.C. 546 (A.P.).

—*Purchase of untanned hides and skins and subsequent export—Levy of tax on purchase.*—The tax on the purchase of untanned hides and skins by a licensed dealer in hides and skins levied by reason of rules 4 (2)(d) and 16 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is not invalid by reason of the contravention of Article 286 (1) (b) of the Constitution of India. Under section 5 (vi) of the Madras General Sales Tax Act, 1939, the sales of hides and skins, whether tanned or untanned, are liable to tax only at such single point in the series of sales by successive dealers as may be prescribed. Rule 16 of the Turnover and Assessment Rules prescribes the point. For reasons of practical convenience, the rule-making authority desired to fix the single point when the series of sales had come to a termination. There were two ways in which such series of sales of untanned hides or skins could come to an end. Rule 16(2)(i) provides for the sale of untanned hides and skins to a tanner and rule 16(2)(ii) provides for such hides and skins which are exported. Then the rule proceeds to fix the liability to tax. In the case of untanned hides or skins sold to a tannery, the tax is levied from the tanner on the amount for which the hides and skins were bought by him. In the case of hides and skins exported, the tax is levied from the dealer who was the last dealer who bought them in the State on the amount for which they were bought by him. If such last dealer was exempt from taxation under section 3(3) of the Act, the dealer before him, who was not so exempt, was liable on the amount for which they were bought by him. The tax is not levied from the last purchaser because the goods were subsequently exported, any more than the tax is levied from the tanner because he bought the hides and skins for tanning. For the purpose

of fixing the single point in the series of sales, the two events, namely, the sale to a tanner and export outside the State, were taken as the termini of the series of sales. A purchase for the purpose of export could not be regarded as an act done in the course of the export of the goods within the meaning of Article 286 (1) (b) of the Constitution. Therefore purchases of untanned hides and skins with a view to their ultimate export are not exempt from taxation under Article 286(1)(b) on the ground of they being purchased in the course of export. The imposition of sales tax on licensed dealers under rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules does not contravene Article 14 of the Constitution. A classification of merchants into those who take out licences and those who do not is one resting on a rational basis and must be upheld. *Per* RAJAGOPALA AYYANGAR, J.—A purchase for the purpose of export even though such purchase is effected to implement orders for the export of the goods is not “a sale or purchase in the course of export” within the meaning of Article 286(1)(b) of the Constitution. According to the Madras General Sales Tax Act and the Rules, raw hides and skins are a commodity in respect of which the rule as to single point taxation applies and the tax is levied upon the last taxable purchaser who deals with the commodity in its raw state. It is by reason of this principle that export figures as a fact to determine the last buyer. In other words, the tax is really one on the transaction of purchase anterior to the export, the factum of the export figuring merely as marking the final stage of a series of purchases by one licensed dealer from another, on the occurrence of which the taxable event, namely the last purchase, is determined. *The State of Madras v. Rallis (India) Ltd., Madras* [1954] (5 S.T.C. 199; (1954) 2 M.L.J. 312) overruled.—THE STATE OF MADRAS v. K. H. CHAMBERS LTD., AND OTHERS [1955] 6 S.T.C. 157 (Mad.).

—*Purchase of untanned hides and skins by licensed dealer and subsequent export—Levy of tax on purchase price—Legality.*—Sales tax on the purchase of untanned hides and skins by a licensed dealer, levied under rules 4(2)(d) and 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is not illegal by reason of any contravention of Article 286(1)(b) of the Constitution. Interpreting rules 4(2)(d) and 16(2) it is clear that in the case of untanned hides and skins bought by a dealer within the State and exported by him outside the State, he is liable for payment of sales tax on the amount for which the goods were bought by him and his liability to pay the

tax is founded not on his being the seller for export but on being the last purchaser in the series of sales of the goods effected within the State. The export by the dealer merely marks the final stage of series of purchases by one licensed dealer from another and it is at that stage that the taxable event, namely, the last purchase, and the person who is liable to pay the tax, namely, the last purchaser, are both determined. In other words, the tax is really one on the transaction of purchase anterior to the sale for export or export sale. The turnover which is taxable under the Act may be the sale or purchase turnover and the State has the option to collect the tax from the dealer on his purchase turnover. If the rules construed in a reasonable manner create a liability and apply to the persons sought to be charged, the tax has to be paid irrespective of any question of hardship. The proper approach is to give the words of the rules their ordinary meaning without straining them one way or the other, either to impose a liability to tax or help avoidance of the tax. A sale in the course of export should be understood in the context of Article 286(1)(b) of the Constitution as meaning a sale taking place not only during the activities directed to the end of the exportation of the goods out of the country but also as part of, or connected with, such activities. A purchase for the purpose of export is regarded only as an act preparatory to export and is not regarded as an act done in the course of the export of the goods out of the territory of India. Therefore the last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business, is not within the protection of Article 286(1)(b). To attract the liability to tax, it is not sufficient if there is an intention to export or a plan which contemplates exportation at the time when untanned hides and skins were purchased by a licensed dealer but there must be a sale which occasions the export of the goods outside the State. If the dealer after making the return showing the amount for which he purchased untanned hides and skins for the purpose of export, changes his mind at the last moment and does not export them but sells them within the State, it will be open to him to claim an adjustment of the tax already paid on the purchase price as provided by rule 15(5).—THE GOVERNMENT OF ANDHRA *v.* N. NAGENDRAPPA AND OTHERS [1956] 7 S.T.C. 568 (Andh.).

—*Purchase of raw hides and skins outside State—Sale after tanning—Sale turnover, whether liable to be taxed.*—The assesseees were licensed tanners and

dealers in hides and skins. They purchased raw hides and skins outside the State and did not therefore pay tax on the purchase price under rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The Sales Tax Authorities held that when these goods were tanned in the assesseees' tannery and were sold by them as tanned hides and skins, they were bound to pay sales tax on their sale turnover on the ground that they had not paid sales tax at the stage of their purchase: *Held*, that the sale turnover of the assessee was not liable to be taxed under the provisions of the Madras General Sales Tax Act and the Rules framed thereunder. The essence of a single point taxation consists in the fixation of a single point either by the Act itself or under the rule-making power if the Act so prescribes. As the Act by section 5(vi) directs the rules to prescribe the single point for taxation, no tax liability can accrue out of a sale of hides and skins whether tanned or untanned unless the rule has prescribed such a single point. The single point for taxation of hides and skins tanned or untanned is to be gathered only from rule 16 of the Turnover and Assessment Rules. There can be no tax liability imposed on hides and skins by rule 4(1). The normal and grammatical meaning of the expression "paid the tax leviable under the Act" in rule 16(3) of the Turnover and Assessment Rules is "paid such tax if any as has been levied under the Act". Where no tax is payable under the Act on the purchase made by a tanner either because the sale transaction takes place outside the State and so a tax on it is not within the legislative competence under the Government of India Act, 1935, or the Constitution of India or because the Madras General Sales Tax Act exempts such transactions of sale or purchase from tax, the tanner on whose purchase no tax is leviable cannot be said to have "not paid the tax leviable under the Act" so as to bring him within the class of people who are subjected to tax on the turnover of the tanned hides and skins sold by them. *Hajee Abdul Shukoor and Company v. The State of Madras* [1955] (6 S.T.C. 352) followed.—A. K. MUNUSWAMY MUDALIAR AND CO., TANNERY *v.* THE STATE OF MADRAS [1956] 7 S.T.C. 1 (Mad.).

—Unlicensed dealer—Rule 16(5)—Whether *ultra vires*.—See SYED MOHAMMAD & CO. *v.* THE STATE OF ANDHRA [1954] 5 S.T.C. 108 (S.C.), SYED MOHAMED & CO. *v.* THE STATE OF MADRAS [1952] 3 S.T.C. 367 (Mad.) and the following cases:—

—Unlicensed dealer—Liability to tax under section 3.—Under the Act, and the rules framed thereunder, the general scheme adopted is multi-point taxation on the turnover of a dealer and it

may be at the sale point or at the purchase point. But in the case of hides and skins the single point taxation at the purchase point is adopted. Even in the case of the same commodity, if the dealer has not taken the prescribed licence, he falls in line with the dealers of other commodities, i.e., his turnover is taxed at the sale point under the multi-point scheme of taxation. Section 5, which presupposes that section 3(1) is the charging section, gives exemption to certain persons from taxation under section 3(1) and shows concession in regard to dealings in specified goods including hides and skins by adopting the single point scheme of taxation. But both the exemption made and the concession given are from the operation of section 3 which remains the charging section. If the condition under which the concession is made is not complied with, section 6A withdraws that concession with the result that the commodity, in regard to which the concession is given, becomes liable to be taxed under section 3(1) of the Act. Section 5(vi) gives a concession to dealers in hides and skins only on condition of their taking out a licence. Where the appellants who were dealers in hides and skins did not renew their licence for the relevant period: *Held*, that by the operation of section 6A they were liable to be assessed under section 3 as if the provisions of section 5 did not apply to such sales. Rule 16(5) of the Turnover and Assessment Rules is not *ultra vires* the rule-making authority. There is no inconsistency between section 5(vi) of the Act and rule 16(5) of the Rules. It cannot be said that the classification embodied in sections 5 and 6A of the Act between licensed dealers in hides and skins and unlicensed dealers in the same commodity is unreasonable or has no relation to the object sought to be achieved. The classification is valid and therefore the provisions of the Act do not offend Article 14 of the Constitution. *Syed Mohamed & Co. v. State of Madras* [1952] (3 S.T.C. 367) and *Syed Mohammad & Co. v. State of Andhra* [1954] (5 S.T.C. 108) considered and distinguished. *State of Madras v. K. H. Chambers Ltd. and Others* [1955] (6 S.T.C. 157) followed. *Hajee Abdul Shukoor & Co. v. The State of Madras* [1955] (6 S.T.C. 352) explained.—V. M. SYED MOHAMED AND COMPANY v. THE STATE OF ANDHRA [1956] 7 S.T.C. 465 (Andh.).

—*Unlicensed dealer in untanned hides and skins—Liability to tax on sale turnover.*—An unlicensed dealer in untanned hides and skins for the assessment year 1952-53 was not liable to pay tax on his sale turnover under the provisions of the Madras General Sales Tax Act, 1939. Rule 16(5) of the Madras General Sales Tax (Turnover and

Assessment) Rules, 1939, which confined the right to single point taxation to dealers who chose to take out a licence, was *ultra vires* the rule-making power, because it contravened section 5(vi) of the Act. The restrictions and conditions to be prescribed under section 5 ought to be consistent with the main purpose of the sub-clause, namely, providing for a single point at which the tax should be levied. If the licensing contemplated by the section was validly made compulsory those who failed to take out the licence might be penalised by the usual methods of enforcements, namely, prosecution with the resultant fine or imprisonment. The penalties that might be imposed for breach of a condition ought to be personal and could not extend to deprive the commodity of the benefit of single point taxation. Rule 5 of the Madras General Sales Tax Rules, which restricted the benefit of single point taxation to those who take out licences was therefore contrary to the provisions of section 5(vi) which did not contemplate such a condition being imposed. In the case of dealers in hides and skins the taking out a licence was not compulsory and therefore section 6A had no application to them. *Hajee Abdul Shukoor and Company v. The State of Madras* [1955] (6 S.T.C. 352; (1955) 2 M.L.J. 494), *Syed Mohamed and Co. and Another v. The State of Madras and Another* [1952] (3 S.T.C. 367; (1952) 2 M.L.J. 598) and *Syed Mohammad and Co. and Another v. The State of Andhra and Others* [1954] (5 S.T.C. 108; (1954) 1 M.L.J. 619) followed. *Syed Mohamed and Company v. The State of Andhra* [1956] (7 S.T.C. 465) dissented from.—M. A. NOOR MOHAMED AND CO. v. THE STATE OF MADRAS AND ANOTHER [1956] 7 S.T.C. 792 (Mad.) reversed by Supreme Court. See below:—

—*Unlicensed dealer in hides and skins—Liability to tax on sale turnover.*—A consideration of the relevant provisions of the Madras General Sales Tax Act, 1939, and the rules made thereunder shows that the charging section is section 3(1) of the Act and the general rule is taxation at multiple points on the total turnover of the dealer. But in the case of sale of certain specified articles a departure has been made and tax at single point is leviable provided certain conditions and restrictions as to licences which are envisaged in section 5 and laid down in the rules are complied with. Rule 16(5) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, is therefore not *ultra vires* the rule-making authority. There is no inconsistency between rule 16(5) of the Turnover and Assessment Rules and section 5(vi) of the Act. Section 5(vi) is a concessional provision for making the sales of hides and skins liable to taxation at a single point, but

that is subject to the restrictions and conditions prescribed in the rules and one of those conditions is the taking of a licence. All that rule 16(5) does is to emphasise the consequences of non-observance of the conditions which sections 5(vi) and 6A have in clear terms prescribed. The judgment in *V. M. Syed Mohammad & Company v. The State of Madras* ([1954] S.C.R. 1117; 5 S.T.C. 108) does not show that the repugnancy of the rule was in controversy or the Court pronounced its opinion upon the merits or it was necessary to do so. Decision of the Madras High Court in *M. A. Noor Mohamed and Co. v. The State of Madras and Another* [1956] (7 S.T.C. 792) reversed.—THE STATE OF MADRAS AND ANOTHER *v. M. A. NOOR MOHAMMED AND CO. AND OTHERS* [1960] 11 S.T.C. 570 (S.C.).

—*Liability of unlicensed dealers in hides and skins—Whether rule 23(5), Mysore Rules, ultra vires—Point at which tax should be levied—Fixation by rules—Validity.*—The combined effect of sections 5 and 7 of the Mysore Sales Tax Act, 1948, and rule 5 is that unlicensed dealers in hides and skins are not entitled to seek restriction of taxation to a single point. Consequently rule 23(5) cannot be said to be repugnant to section 5. For the purpose of assessment a difference is made between licensed and unlicensed dealers and the differentiation is not unreasonable. The question whether in the case of hides or skins the buyer or the seller has to bear the burden of tax is a matter of detail in giving effect to the object of the Act without involving delegation of policy which the Legislature has to determine. The amendment of rule 1(2) in Schedule I of the Act cannot therefore be assailed as being due to exercise of power not lawfully vested in Government.—*ABDUL RAHMAN v. STATE OF MYSORE AND ANOTHER* [1957] 8 S.T.C. 205 (Mys.).

—*Unlicensed dealer—Liability to tax on each occasion of sale—Whether rule 23(5) conflicts with section 5(vi) and therefore ultra vires.*—Rule 23(5) of the Rules under the Mysore Sales Tax Act, 1948, dealing with sales of hides or skins by dealers other than licensed dealers in hides or skins was not *ultra vires* on the ground that it was in conflict with section 5(vi) of the Act. In the absence of compliance with rule 37 and in the absence of proper proof of dissolution of the assessee-firm prior to the date of assessment, the assessee could not complain that the order of assessment was invalid since it was made after dissolution of the assessee-firm. An order of assessment would not be invalid merely because it pertained to more quarters than four,

particularly when for the purpose of the assessment of tax, the turnover of each quarter had been taken separately into consideration. Reasoning in *Abdul Rahman v. State of Mysore and Another* [1957] (8 S.T.C. 205) and *V. M. Syed Mohamed and Company v. The State of Andhra* [1956] (7 S.T.C. 465) adopted. *M. A. Noor Mohamed and Co. v. The State of Madras and Another* [1956] (7 S.T.C. 792) dissented from.—STATE OF MYSORE *v. N. A. SARAVATHULLA AND CO. AND ANOTHER* [1958] 9 S.T.C. 593 (Mys.).

—Agent of non-resident principals—Sale by agent, a licensed dealer—Principals not licensed dealers—Whether agent can be assessed to tax.—See *UNION LEATHER CO. v. STATE OF MADRAS* [1960] 11 S.T.C. 318 (Mad.) (page 14 *supra*).

—*Licensed dealer—"Sale for export" in rule 16(2), meaning of—Export to commission agents in Mysore and sale by them—Liability to tax.*—The words "sale for export" in rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, can be reasonably construed to mean "sale by export" or "export sale". The rule does not say that the sale which occasions export should be effected within the State itself. Whether the sale is effected outside the State or inside the State, if it is a sale by export or an export sale that would furnish the stage for assessing the dealer at the purchase point. The sale for export is not a condition for imposing the tax on the purchase point, but one that furnishes the stage for imposing it. The sale either before or after export, if it is consummated only by export, furnishes the stage for taxing the dealer at the purchase point in the series of sales liable for the tax. The assessee, a licensed dealer carrying on business in raw hides and skins in Andhra State, sent raw hides and skins to his commission agents at Bangalore who sold them in Mysore State on his account: *Held*, that the assessee was liable to tax on the purchase value of the raw hides and skins under rule 16(2) of the Turnover and Assessment Rules.—THE STATE OF ANDHRA *v. M. C. SANNAPPA* [1956] 7 S.T.C. 757 (Andh.).

—*Last dealer in rule 16(2)(ii)—Whether includes an unlicensed dealer.*—Clause (ii) of sub-rule (2) of rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, does not take in an unlicensed dealer and the dealer from whom the tax is to be levied under that rule is the last licensed dealer. Where the petitioners, who were licensed dealers in untanned hides and skins, sold them to unlicensed dealers, who, in their turn, exported them out of the State of Andhra: *Held*, that the taxing authorities would be justified in levying taxes on the petitioners under rule 16(2)(ii)

in respect of their sales to the unlicensed dealers.—*SHAIK ABDUL RAZAK AND OTHERS v. STATE OF ANDHRA PRADESH* [1959] 10 S.T.C. 214 (A.P.).

—*Purchase of raw hides and skins and tanning in tanneries other than his own—Liability to tax.*—A person who tanned in the course of his business raw hides and skins bought by him, in a tannery which was not his, would also be liable to be assessed under rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, in respect of the raw hides and skins purchased as a tanner.—*SRI JEY CHERISH AND CO., LTD. v. THE STATE OF MADRAS* [1960] 11 S.T.C. 353 (Mad.).

—*Purchase of raw hides and skins and tanning in tannery not owned by him—Liability to tax.*—In order to render a person liable as a tanner under rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, it is not necessary that he should personally tan the goods nor is it necessary that he should tan them in a tannery either owned by him or in which he has an interest. A person who tans in the course of his business raw hides and skins bought by him, in a tannery which was not his, would also be liable to be assessed under rule 16(2) in respect of the raw hides and skins purchased as a tanner.—*M. S. MOHAMMED HUSSAIN AND SONS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 362 (Mad.).

—*Purchase of raw hides and skins inside State and tanning outside State—Purchase whether taxable.*—Having regard to the language of rule 16(2) which comprehends all cases of purchases of untanned hides and skins by a tanner and to the absence of any saving clause therein with respect to the cases provided for in rule 16(4), it must be held that rule 16(4) is intended to apply only to those cases which are not covered by rule 16(2). The application of rule 16(2), being at an earlier stage, would take in all cases where raw hides and skins are bought by a tanner in the State for tanning. Rule 16(4) cannot be read as a proviso to rule 16(2) (i); nor can rule 16(2) and 16(4) be read as alternatives in respect of the same goods. Therefore hides and skins purchased while in a raw condition inside the State would be liable to be assessed under rule 16(2) irrespective of the fact whether they were tanned inside the State or outside; and rule 16(4) would not apply to such a case.—*M. S. MOHAMMED HUSSAIN & SONS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 362 (Mad.).

—*Purchase of raw hides and skins partly from outside State and partly from unlicensed dealers inside State—Levy of tax on sale value of tanned*

hides and skins—Legality.—The assessee, licensed dealer in hides and skins, were assessed to sales tax on the sale value of tanned hides and skins for the assessment year 1955-56 under rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The raw hides and skins from which the tanned hides and skins were prepared had been purchased by the assessee partly outside the State and partly from unlicensed dealers within the State. The assessee contended that in so far as hides and skins were concerned, the taxation was invariably at the purchase point and if the taxing authorities had failed to assess the turnover at that point, it was not open to them to rely upon a transaction which was not at the point fixed, that is to say, there was no second point at which the hides and skins could be taxed: *Held*, that the assessee could not be taxed on the purchase value of raw hides and skins and the levy of tax on the sale value was correct.—*E. K. MOHAMED IBRAHIM SAHIB AND SONS v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 343 (Mad.).

—*Purchase of hides and skins from unlicensed dealers in 1954-55 and 1955-56—Sale after tanning—Sale value of unsold stock at commencement of 1955-56 included in turnover of that year—Whether assessee entitled to benefit of proviso to rule 16(2).*—The assessee a licensed dealer in hides and skins and also a tanner had no opening stock of raw hides and skins at the commencement of the year 1955-56, which was purchased by it from unlicensed dealers during the year 1954-55. The sale value of tanned hides and skins resulting from the opening stock was included in the turnover of the assessee for the year 1955-56. The assessee contended that under rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 (as it stood in the year 1954-55 prior to the amendment dated 3rd September, 1955, with retrospective effect from 1st April, 1955) its purchase turnover of untanned hides and skins was liable to assessment under rule 16(2)(i) and that the State having omitted to assess the turnover could not deprive it of the benefit of the proviso to clause (2) of rule 16 under the amended rule: *Held*, that the assessee's purchase turnover of raw hides and skins during the year 1954-55 was not within the ambit of rule 16 as it stood in 1954-55 and there was no omission on the part of the State to assess the assessee in that year. Therefore the assessee could not claim the benefit of the proviso to rule 16(2) as it was neither in fact assessed to tax nor in law was it liable to be so assessed under the Act or the Rules. The assessee could not invoke rule 4 as that rule did

not provide for the fixation of a single point within section 5(vi) as it stood in 1954-55. A dealer in hides and skins must be governed only by rule 16 and if it so happened that he was outside the scope of that rule, section 3, the charging section, would not enable any tax to be levied. The authority of the Full Bench decision in *Hajee Abdul Shukoor and Co. v. State of Madras* [1955] (6 S.T.C. 352) is not in any way undermined or shaken by the decision of the Supreme Court in *State of Madras v. M. A. Noor Mohammed and Co.* [1960] (11 S.T.C. 570). —*M. R. K. ABDUL SALAM AND CO. v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 629 (Mad.).

—*Unlicensed dealer—Absence of rule 16(5), Turnover Rules, for a particular period—Whether entitled dealer to claim exemption from taxation.*—It was not by virtue of rule 16(5) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, that the taxability of an unlicensed dealer in hides and skins was determined. It was the Madras General Sales Tax Act, 1939, independently of the Rules, that rendered unlicensed dealers in hides and skins subject to multiple taxation. Rule 16(5) merely repeated the consequences that flowed from the non-observance of the conditions indicated in sections 3, 5 and 6-A of the Act read in conjunction with rule 5 of the Madras General Sales Tax Rules, 1939. Therefore the non-existence of rule 16(5) of the Turnover Rules during the period 1st April, 1954, to 31st March, 1955, did not clothe the unlicensed dealers with a right to claim exemption from payment of tax. *The State of Madras and Another v. M. A. Noor Mohammed and Co. and Others* [1960] (11 S.T.C. 570) followed. *M. R. K. Abdul Salam and Co. v. The Government of Madras* [1962] (13 S.T.C. 629) explained. —*UNION LEATHER CO. v. THE STATE OF MADRAS* [1965] 16 S.T.C. 1031 (Mad.).

—*Application for grant of licence—Date from which licence takes effect—Unlicensed dealer—Whether liable to multi-point levy—Licensing provisions—Whether discriminatory—Whether violate provisions of Article 14, Constitution of India.*—Under the Madras General Sales Tax Rules, 1939, a dealer in hides and skins can be granted licence only from the date on which the application is received by the authority, except in cases where such an application is made before the 30th day of April, in which event alone the licence could be granted effective from the 1st April of that year. Where the petitioner applied for the grant of a licence after that date and from the circumstance that it was granted with effect from

29th May, 1954, only, it could be assumed that that was the date on which the application reached the licensing authority. Therefore, the petitioner was an unlicensed dealer between the period 1st April, 1954, to 29th May, 1954. Neither the Madras General Sales Tax Act, 1939, nor the rules framed thereunder made the taking out of a licence compulsory. But the real effect of sections 5 and 6-A of the Act is that a person who does not take out a licence is by the law denied the benefit of the single point tax and he cannot be heard to complain that just for the reason that the law did not make the taking of a licence compulsory in so many words, he should still be treated as a licensed dealer for all purposes by extending the beneficial mode of treatment of a single point tax to him. All the sales of any commodity would come within the scope of the general charging section, section 3 of the Act, which provides for a multi-point levy, and it is only where the law fixes a single point that the rules have to provide for the prescription of that particular point. An unlicensed dealer becomes liable to tax under section 3, and rules 16(1) to (4) in so far as they purport to provide for a particular point of taxation as required by section 5 can only relate to a licensed dealer. In so far as unlicensed dealers are concerned they cannot claim the benefit of a single point of taxation. A licensing system is a reasonable restriction upon the freedom guaranteed by Article 19(1)(g). The power to levy a tax extends to the enactment of all incidental provisions for ensuring the collection or preventing the evasion of tax. A classification germane to the purpose of the enactment is not prohibited by the Article 14 of the Constitution. If such a classification has a real connection and is necessary to carry out the purpose of the Act, the classification cannot be attacked as discriminatory. The classification of dealers as licensed and unlicensed is necessary for the purpose of the Act and has an integral connection with its underlying policy. Therefore the distinction between licensed and unlicensed dealers and the different rates of tax imposed upon the transactions by them are not hit by Article 14 of the Constitution. —*A. MOHAMMED ZACHERIA AND CO. v. THE STATE OF MADRAS* [1965] 16 S.T.C. 1049 (Mad.).

—*Assessments under rule 16(1) and (2), Madras General Sales Tax (Turnover and Assessment) Rules, 1939—Validity of section 2, Madras General Sales Tax (Turnover and Assessment) Rules Validation Act (27 of 1959)—Scope of Madras General Sales Tax (Special Provisions) Ordinance (3 of 1963)—Effect of repeal of Ordinance 3 of 1963 by Madras General Sales Tax (Special Provisions) Act (11 of*

1963).—The Madras General Sales Tax (Turnover and Assessment) Rules Validation Act (27 of 1959) is a valid piece of legislation and section 2 of that Act validated completed assessments as well as steps taken to make such assessments, notwithstanding the judgment or decree of any court. The Legislature has also the power to enact a provision as is contained in section 2 of Act 27 of 1959 declaring as valid, proceedings taken by authorities notwithstanding the judgment of courts which had invalidated them. There was nothing in the Madras General Sales Tax (Special Provisions) Ordinance (3 of 1963) which declared assessments made before the coming into force of the Ordinance invalid. Sections 2(2) and 2(3) of the Ordinance contained provisions for making a reassessment, the former at the instance of the assessee and the latter at the instance of the department, whenever they considered that the assessments made under the pre-existing rules, required modification in the light of the Ordinance. Where no steps had been taken to reassess under section 2(2) or section 2(3) of the Ordinance, assessments already made before the Ordinance came into force as well as pre-assessment notices would be valid. The assessee contended that in view of the fact that Ordinance 3 of 1963 did away with rules 16(1) and 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, retrospectively and the Madras General Sales Tax (Special Provisions) Act (11 of 1963) which repealed Ordinance 3 of 1963, did not re-enact a provision corresponding to rule 16(1), the repeal of rule 16(1) by Ordinance 3 of 1963 was final and complete leading to the result that rule 16(1) never existed: *Held*, (1) that if an Act which repeals an earlier Act is itself only a temporary Act, the general rule is that the earlier Act is revived after the temporary Act is spent. But there will be no revivor if it was clearly the intention of the Legislature to repeal the earlier Act absolutely; (2) that Ordinance 3 of 1963, being one issued under Article 213(2)(a) of the Constitution was, by its very nature, temporary in character and there was no expression of an intention in that Ordinance for repealing the earlier rules permanently. The intention of the Legislature in enacting Act 11 of 1963 was to do away completely with the effect of the Ordinance, at the end of the period for which it subsisted. On the expiry of the Ordinance, rule 16(1) automatically revived and it applied to assessments not completed when the Ordinance came to an end.—V. GOVINDASWAMI NAIDU v. THE ADDITIONAL COMMERCIAL TAX OFFICER, COIMBATORE NORTH, AND ANOTHER [1966] 18 S.T.C. 60 (Mad.).

—*Purchase of raw hides and skins outside State and sale of dressed hides and skins to local dealers after tanning—Assessment on sale turnover at certain rate on amount for which corresponding goods were last purchased in untanned condition—Legality—Section 2(1), Madras General Sales Tax (Special Provisions) Act, 1964, authorising such assessment—Whether offends Article 286 and is void and unenforceable.*—Section 2(1) of the Madras General Sales Tax (Special Provisions) Act, 1964, offends Article 286 of the Constitution and is void and unenforceable in so far as it directs the assessment at a certain rate of the first sale of dressed hides and skins on the amount for which the corresponding untanned goods were last purchased outside the State or in the course of inter-State trade and commerce. Section 2(1) as it stands ostensibly applies the rate to sale turnover but factually and in substance brings to charge the turnover of outside or inter-State purchase. It is impossible to deny that such an impost directly impinges on the outside or inter-State sale which the State is inhibited from taxing. The Madras General Sales Tax (Special Provisions) Act, 1964, should be read as part of the 1939 Act. It is not a Validation Act in the sense that it regularises the orders which are illegal when they were passed. The Act is intended to authorise re-assessment under its provisions read with the main Act of dealers who had been assessed under an invalid provision. The expression “has been assessed” in the 1964 Act is only descriptive and it has been used to spot out the dealer who factually has been assessed and it does not mean that the Act applies only to dealers whose assessments have not been set aside and continued to be in force. If a law enacted by the Legislature is revoked, subject to constitutional competency and limitation, it can revive the Act by re-enactment or by making a provision which directs that the law repealed shall be deemed to have been in force at the relevant time. The last part of it is an instance of revival by reference.—A. HAJEE ABDUL SHUKOOR & Co. AND OTHERS v. THE SPECIAL DEPUTY COMMERCIAL TAX OFFICER (HIDES AND SKINS) II, VELLORE, AND OTHERS [1969] 23 S.T.C. 455 (Mad.).

HIGH COURTS

(See also OFFENCES, WRITS UNDER CONSTITUTION, SUITS, REFERENCE and COMMISSION AGENT)

Application to state case.—An application for directing the Board of Revenue to state a case to the High Court under section 21(3) of the Bengal Finance (Sales Tax) Act, 1941, need not be moved

on the appellate side. The Judge sitting on the Original Side to whom the Chief Justice has assigned the matter is the "High Court" and it is for him to hear the application and order statement of case.—*INDIA ICE AND COLD STORAGE CO. LTD. v. THE MEMBER, BOARD OF REVENUE, WEST BENGAL* [1948] 1 S.T.C. 191 (Cal.).

Contempt of Court—Writ petition challenging validity of provisions—Issue of interim order of stay directing officer not to take further assessment proceedings—Officer issuing notice to assessee that he is liable to tax and should furnish security for proper payment of Government dues—Whether officer liable for contempt of Court—Duty of Government officers stated.—The petitioner filed writ petitions challenging the validity of item 7 of the Second Schedule to the Madras General Sales Tax Act, 1959, and also prayed for stay of all further assessment proceedings in respect of the years 1967-68 and 1968-69 pending disposal of the writ petitions. The Court passed an interim order staying all further assessment proceedings for the years 1967-68 and 1968-69 in respect of the petitioner, pending further orders on the writ petitions. On the day the interim order of stay was served on the assessing officer, he issued to the petitioner a notice which stated, *inter alia*, that according to the provisions in force the petitioner was liable to tax on the transactions effected by him as a registered dealer and that the petitioner should furnish security for proper payment of Government dues before a certain date as required by section 21(5) of the Madras General Sales Tax Act, 1959. The petitioner thereupon filed a petition for taking action against the officers for contempt of orders of the High Court: *Held*, that the notice issued to the petitioner constituted contempt of the High Court. [As the officers tendered unconditional apology, the Court did not take any further action in the matter.] No officer of the Government, however high or exalted he may be, can take upon himself the responsibility of judging the correctness or validity of an order of any Court and if he honestly and *bona fide*, in the discharge of his functions, feels that the order is erroneous or requires any modification, the only remedy open to him is to approach that Court by way of review or modification, or a higher Court by way of appeal or otherwise. Apart from that, it is not open to him to take upon himself the responsibility of judging the order and take any action contrary to or inconsistent with the same on the basis of his own judgment.—*MOTTUR HAJEE ABDUL RAHMAN AND COMPANY v. THE DEPUTY COMMERCIAL TAX*

OFFICER, VANIYAMBADI, AND ANOTHER [1968] 22 S.T.C. 472 (Mad.).

Division Bench of High Court—Whether bound by decision of another Division Bench.—One Division Bench of the High Court should regard itself bound by the decision of another Division Bench on a question of law. If a Division Bench does not accept as correct the decision on a question of law of another Division Bench, the only right and proper course to adopt is to refer the matter to a Full Bench.—*THE PUBLIC PROSECUTOR v. V. M. RAMALINGAM PILLAI* [1958] 9 S.T.C. 510 (Mad.) (F.B.).

Jurisdiction over Government servants of other States.—The Calcutta High Court has no jurisdiction over the State of Bihar; but where the Government of Bihar had opened an office in Calcutta and were attempting to realise taxes there and to take proceedings in respect thereof, the High Court could prevent the officers within the jurisdiction from proceeding contrary to law.—*BLACKSTONE PRODUCTS LTD. v. THE COMMERCIAL TAX OFFICER, SHYAMBAZAR CHARGE, AND OTHERS* [1958] 9 S.T.C. 796 (Cal.).

Powers of High Court.—It is not the function of the High Court to decide questions of fact and to determine the liability of a dealer for assessment on that basis. All that the Court can do is to determine whether, on the facts admitted or proved, the assessment has been correctly made.—*CHAKOO BHAI GHELABHAI v. THE STATE OF ORISSA AND OTHERS* [1956] 7 S.T.C. 36 (Ori.) reversed by Supreme Court on the main question in [1960] 11 S.T.C. 716.

Power to consider in revision whether there is sale or not.—The question whether there is a sale or not is not a pure question of fact but a mixed question of law and fact which can be gone into by the High Court in revision.—*Haji P. K. MOIDOO BROS. v. THE STATE OF MADRAS* [1959] 10 S.T.C. 1 (Ker.) (F.B.).

Powers of High Court in revision—Power to take note of change in law and set aside order of Tribunal.—The principle that the powers of an appellate court are co-extensive with those of the original court (subject to such statutory restrictions as may be imposed in regard to the exercise of such power) is not the result of any statutory provision like Order 41, rule 33, of the Civil Procedure Code, 1908, but inherent in the nature of the appellate jurisdiction. A court of revision would have all the powers of an appellate court except that the conditions of interference would have to be in accord with the relevant statutory provision. Therefore, it will be open to a

revisional court to take note of a subsequent change in the law and grant reliefs to the parties on the basis of such law. Section 12-B (4) of the Madras General Sales Tax Act, 1939, gives a wider jurisdiction to the High Court than section 115 of the Civil Procedure Code. Under section 12-B (4) the High Court has got powers to determine the questions of law raised in the case, and reverse or affirm or amend the order against which the revision petition was filed or remit the same to the Appellate Tribunal with its opinion on the questions of law. The jurisdiction under the section would be appellate jurisdiction and the High Court would therefore have plenary powers of interference where there is any error of law. Such error would include an error by reason of any subsequent retrospective enactment. The Sales Tax Appellate Tribunal held, following the decision of the Supreme Court in *Bengal Immunity Co. Ltd. v. State of Bihar* [1955] 6 S.T.C. 446, that certain sales in which goods were delivered within the Madras State for the purpose of consumption therein were not liable to be taxed by reason of the provisions of Article 286(2) of the Constitution. A few days later the Sales Tax Laws Validation Ordinance, 1956, came into force and this was replaced by the Sales Tax Laws Validation Act, 1956. The Ordinance and the Act were intended to validate all levies and collections of tax on such sales (Explanation sales) during the period 1st April, 1951, to 6th September, 1955. On a revision filed in the High Court by the State against the decision of the Appellate Tribunal, the assessee contended that although the assessment, which had been held by the Tribunal to be illegal, would be validated by the provisions of the Sales Tax Laws Validation Act, 1956, it was not open to the High Court to apply the provisions of the Act and set aside the order of the Appellate Tribunal, as its powers would be limited to considering the question of the correctness of the order of the subordinate authority on its face in the light of the state of the law existing when such authority passed the order: *Held*, (1) that under section 12-B(4) the High Court has power to take note of a subsequent change in the law; (2) that in the case of a retrospective enactment the law as later enacted should be deemed to have been in existence on the date of the order of the inferior tribunal, even though it was not actually so and therefore the decision of the Appellate Tribunal was against law and the High Court which had seisin of the case as a court of revision at the time when the retrospective legislation was enacted and which had the jurisdiction to interfere in case where an error of law was committed

could give effect to that law.—*THE STATE OF MADRAS v. ASHER TEXTILES LTD.* [1959] 10 S.T.C. 584 (Mad.).

—It is not open to a revision petitioner under section 38 of the Madras General Sales Tax Act, 1959, to seek permission to raise questions of law relating to a turnover not comprised in the petition by filing a miscellaneous petition subsequent to the filing of the revision petition after the expiry of the period of limitation prescribed under the Act. If the miscellaneous petition is only an application for leave to raise additional grounds, there can be no question of condoning the delay in filing the application as the law does not prescribe any period of limitation for an application of that description.—*STATE OF MADRAS v. VOLTAS LIMITED*, MADRAS: No. 2 [1963] 14 S.T.C. 861 (Mad.).

—*When revision lies to High Court against order of Appellate Tribunal.*—In order to attract the revisional jurisdiction of the High Court under section 15-B of the General Sales Tax Act, 1956, the Appellate Tribunal should have “either decided erroneously or failed to decide” a question of law. Where the order of the Appellate Tribunal proceeds on the basis of a concession, no revision lies to the High Court.—*KUMARAKATH ITHACK SOURI v. THE STATE OF KERALA* [1961] 12 S.T.C. 721 (Ker.).

—*Fee of Rs. 100 paid along with petition under section 12-B, Madras Act—Whether can be refunded when petition is withdrawn.*—There is no provision in the Madras General Sales Tax Act, 1939, enabling an assessee to obtain a refund of the fee of Rs. 100 paid along with a petition filed in the High Court under section 12-B of the Act. Nor is there any provision under the Sales Tax Act stating that any fee paid shall not be refunded. The provisions of the Court-fees Act are not applicable to such petitions. The High Court, however, can, in the exercise of its inherent powers, direct a refund of the fee, where the revision petition is sought to be withdrawn before it takes effect by being taken on file and numbered.—*M. S. BALAKRISHNA CHETTY v. STATE OF MADRAS* [1962] 13 S.T.C. 398 (Mad.).

—*Power to order refund of court-fee in revision cases.*—Section 64, Andhra Court-fees and Suits Valuation Act, 1956, cannot govern tax revision cases, and there is no specific provision in the Sales Tax Act for refund of court-fees in revision cases while such a power is specifically conferred by a rule made under the Sales Tax Act with regard to appeals disposed of by the Tribunal.

Section 12-B, sub-section (4)(a), of the Sales Tax Act does not enable the High Court to make an order for refund of court-fee and the inherent power to make an order for refund of court-fee must be confined to the cases authorised by precedents and could not arbitrarily be extended.—*SRI RAMAKRISHNA COMMERCIAL SOCIETY LTD. v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1961] 12 S.T.C. 31 (A.P.) (F.B.).

—*Power to interfere in revision.*—The High Court's power of revision is limited and confined to interference only on the ground that the Appellate Tribunal either decided erroneously or failed to decide any question of law. It will however be open to a party to challenge the conclusions of fact drawn by the Tribunal on the ground that it is not supported by any legal evidence or that the conclusion drawn from the relevant facts is not rationally possible and if such a plea is established the Court may consider whether the conclusion in question is not perverse and should not, therefore, be set aside.—*SANKUNNY NAIR v. STATE OF KERALA* [1961] 12 S.T.C. 758 (Ker.).

—*Power of High Court to pronounce upon vires of provision.*—An authority created by a statute cannot question the *vires* of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it.—*K. S. VENKATARAMAN AND CO. (P.) LTD. v. THE STATE OF MADRAS* [1966] 17 S.T.C. 418 (S.C.).

—Challenge to the provisions of an Act as *ultra vires* cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.—*DHULABHAI v. STATE OF MADHYA PRADESH AND ANOTHER* [1968] 22 S.T.C. 416 (S.C.).

—See also *SUITS infra*.

—*High Court taking into consideration affidavit filed by assessee without objection from State—Legality.*—Where on a revision petition under section 38 of the Madras General Sales Tax Act, 1959, the High Court had taken into account affidavits filed on behalf of the assessee, and the State had not raised any objection before the High Court: *Held*, that it was not open to the State in an appeal to the Supreme Court to question the act of the High Court as illegal. [The Supreme Court did not express a concluded opinion on the question whether the High Court had jurisdiction under section 38 of the Madras General Sales Tax Act, 1959, to take additional evidence and rely upon it.] Decision of the Madras High Court in *Deputy Commissioner (C.T.),*

Coimbatore Division, Coimbatore v. R. M. Devan [1963] (14 S.T.C. 923); *Bombay Company Private Ltd. v. State of Madras* [1964] (15 S.T.C. 804) and *Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Madura Knitting Company* [1964] (15 S.T.C. 807) affirmed.—*THE STATE OF MADRAS v. A. HABIBUR REHMAN AND SONS* [1968] 21 S.T.C. 51 (S.C.).

Power of superintendence—Decision of tribunal arbitrary or erroneous on jurisdictional point—Right to interfere.—The scope of Article 227 of the Constitution of India is at least as wide as that of old section 107 of the Government of India Act, 1915. If the decision of a tribunal can be shown to be arbitrary and devoid of reason or erroneous on the face of it, or to be based on an error on a jurisdictional point then, by the exercise of the power of superintendence under Article 227 of the Constitution, the High Court can and should revise the decision. If an error, whether of fact or law, is such that the erroneous decision has resulted in the tribunal exercising jurisdiction, not vested in it by law, or in its having failed to exercise jurisdiction, vested in it by law, that will come within the scope of Article 227. This error may have resulted from a violation of the rules of natural justice by taking into consideration matters, which are extraneous and irrelevant, or by substituting judicial consideration by bias, based on suspicion, arising from those extraneous matters or from any other cause whatsoever, but if it has affected the assumption or exercise of jurisdiction, as envisaged above, it will be a jurisdictional error for purposes of the Article. Even apart from the question whether the doctrine of precedents would apply in full vigour to tribunals of the nature of the Board of Revenue, it is a consideration of natural justice that the authorities in the sphere of taxation cannot hold the citizen to their whims and caprices in matters concerning essential practices of trade and business, allowing deductions under the Sales Tax Act in some cases and disallowing such deductions in some others, although the circumstances appertaining to both the categories are exactly similar. In the matter of operation of the Bengal Finance (Sales Tax) Act, the Board of Revenue is, ordinarily, the highest authority and decisions of that tribunal are binding on the taxing authorities. It is only just and fair that the citizen who has taken his guidance from the earlier decisions of the Board shall not be allowed to be prejudiced or victimized by sudden and unreasoned reversal of the view point of that highest authority.—*DURGA SREE STORES v. BOARD OF REVENUE,*

WEST BENGAL, AND ANOTHER [1964] 15 S.T.C. 186 (Cal.).

Power of review under Sales Tax Act—Constitution of Tribunal—Whether a ground for review—Order of High Court passed in presence of counsel—Whether amounts to communication.—The provisions of section 22(7)(a) of the Andhra Pradesh General Sales Tax Act, 1957, are definitive of the limits within which a review is permitted and a review is not ordinarily permissible under the inherent powers of the High Court. The petitioner filed an application under section 22(7)(a) to review an order of the High Court on the ground that when the Sales Tax Appellate Tribunal passed the order, the Chairman had retired and the successor had not yet taken charge, and as the Chairman had not passed any order under section 3(3)(a)(ii) of the Act, the order made by two members of the Tribunal was nullity: *Held*, that the plea as to the constitution of the Tribunal, if true, was deliberately withheld by the petitioner who was duly represented at all material stages of the proceedings and that he was not entitled to ask for a review by reason of his own act of intentional withholding tantamounting to deliberate negligence. Further the statutory provision relating to review was definitive of the limits within which a review was permitted and did not admit the question of the constitution of the Tribunal. Where the order of the High Court was pronounced in open Court in the presence of the counsel for the petitioner it constituted communication to the petitioner through his counsel within the meaning of rule 42 of the Andhra Pradesh General Sales Tax Rules, 1957.—*MADURI MOTORS, SECUNDERABAD v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 673 (A.P.).

—Scope and ambit of power—General power of review—Whether extends to proceedings under Sales Tax Act—"Revising authority" in rule 18, Madras Rules—Whether includes High Court—Power to admit new evidence in exercising revisional powers.—The scope and ambit of the power of the High Court to review its orders passed under section 12-B of the Madras General Sales Tax Act, 1939, is governed only by section 12-B(7). There is no scope for enlarging such a power or for resorting to the provisions of the Civil Procedure Code. In view of the special provisions and limited scope of review provided for under section 12-B(7), the general power of review of the High Court as a Civil Court cannot extend to the proceedings under the Sales Tax Act. The expression "revising authority" mentioned in rule 18 of the Madras General Sales Tax Rules,

1939, cannot apply to the High Court sitting in revision under section 12-B of the Act. The revising authority mentioned in rule 18 can only refer to the authorities mentioned in section 12, namely, the Commercial Tax Officer, the Deputy Commissioner and the Board of Revenue. In exercising revisional powers under section 12-B of the Madras General Sales Tax Act, 1939, the High Court will not permit any new evidence to be placed before it for the first time either at the instance of the assessee or of the State. *Chandaji Kubaji & Co. v. The State of Andhra Pradesh* [1960] (11 S.T.C. 451) referred to.—*P. HAJI ABDUL WAHAB AND BROTHERS v. THE GOVERNMENT OF MADRAS*: No. 2 [1962] 13 S.T.C. 834 (Mad.).

—Decision of High Court based on concession by counsel—Concession a mistake of fact—Whether review maintainable when mistake is discovered.—In *Haji P. K. Mammoo v. State of Kerala* [1961] (12 S.T.C. 142) the State Representative conceded that rule 17(3-A) of the Madras General Sales Tax Rules, 1939, was not previously published as required by section 19(4) of the Madras General Sales Tax Act, 1939, and the High Court therefore held that that rule was invalid. Subsequently it was found that there was previous publication and the State of Kerala thereupon filed an application under section 12-B(7) of the Act for a review of that judgment. On the question whether the application was maintainable: *Held*, that the concession made by the State Representative that the rule was not previously published was on a mistake of fact and so the real fact of the existence of previous publication under section 19(4) was not brought to the notice of the High Court on the previous occasion. Section 12-B(7) therefore applied to the case and the application for review must be allowed.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, NORTH ZONE, KOZHICODE, AND ANOTHER v. HAJI P. K. MAMMOO* [1962] 13 S.T.C. 962 (Ker.).

Nature of jurisdiction of High Court—Petition under Article 226—Questions of fact or law arising under Sales Tax Act—Powers of Sales Tax Authorities—Power of High Court.—The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to

certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal to correct errors of fact and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to an assessee to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up. Under the Assam Sales Tax Act, 1947, the Legislature has entrusted the power to ascertain facts on which the price received on sales becomes taxable, to the authorities appointed in that behalf with right of recourse to the High Court on questions of law arising out of the order of the Commissioner of Taxes. It is therefore contemplated by the Legislature that all material evidence on which the taxpayer relies to justify his claim that his transactions are not taxable, should be placed before the taxing authorities so that they may have an opportunity to adjudicate upon the claim. If after a proper trial, the claim is negatived, because the facts on which it is founded are not proved, the proceedings must end. If, however, the adjudication of the Commissioner is vitiated because there is no evidence to support it or it is based on conjectures, suspicions, or irrelevant materials, or the proceedings of the taxing authorities are otherwise vitiated so that there has been no fair trial, the High Court may advise the Commissioner on questions properly referred to it in the manner provided by the Act. But the High Court cannot be asked to assume the role of an appellate authority over the decision of the Commissioner on questions of fact or even of law. *Tata Iron and Steel Company Ltd. v. The State of Bihar* ([1958] S.C.R. 1355; 9 S.T.C. 267) referred to.—*THANSINGH NATHMAL AND OTHERS v. THE SUPERINTENDENT OF TAXES, DHUBRI, AND OTHERS* [1964] 15 S.T.C. 468 (S.C.).

Nature of jurisdiction of High Court—Reference under Sales Tax Act.—A Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. If the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended. Similarly when the question has been referred to the High Court and in the meanwhile the law has been amended with retroactive operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law which has been substituted for the original provision, the High Court is giving effect to legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts. If the question is not so couched as to invite the High Court to decide the question in the light of the law as amended or if it necessitates investigation of facts which have not been investigated, the High Court may refuse to answer the question. Application of the relevant law to a problem raised by the reference before the High Court is not normally excluded merely because at the date when the Tribunal decided the question the relevant law was not or could not be brought to its notice. There is nothing so peculiar in the nature of a reference under the Indian Income-tax Act or the Sales Tax Acts that in deciding it the High Court is restricted to the application of the law which has been superseded by legislation since the date when the reference was made by the Tax Tribunal and is obliged to refuse to apply the law which by legislative direction has to be applied to a particular transaction which is the subject-matter of the reference. The assessee-company was a manufacturer of cotton yarn and it had opted to be assessed on the basis of the turnover of the previous year under section 7 of the U. P. Sales Tax Act, 1948. The rate of tax on cotton yarn was then 3 pies in the rupee. On 9th June, 1948, the Government issued a notification under section 3-A by which sales of cotton yarn by manufacturers of cotton yarn became taxable at 6 pies per rupee. For the assessment year 1948-49, the assessee contended that the assessment should be made at the uniform rate of 3 pies per rupee throughout the year but the Sales Tax

Officer held that the rate of 3 pies per rupee was only to apply for the first 69 days of the assessment year and the rate of 6 pies per rupee was to apply for the rest of the year as per the notification. At the instance of the assessee a reference was made to the High Court by the Judge (Revisions) and the High Court following its judgment in *Modi Food Products Ltd. v. Commissioner of Sales Tax, U.P.* [1955] (6 S.T.C. 287) held in favour of the assessee. With special leave, the Commissioner of Sales Tax appealed to the Supreme Court. In the meantime the Supreme Court held in *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.* [1961] (12 S.T.C. 182) that where an assessee had elected to submit his return on the turnover of the previous year under section 7, he was liable to be assessed to sales tax at the rate in force on the first day of the year of assessment, because the liability arose on that date, and any subsequent enhancement of the rate by virtue of a notification under section 3-A did not alter that liability. Subsequent to this decision the Legislature passed the Uttar Pradesh Bikri Kar (Sanshodhan) Adhiniyam, 1962, inserting a new section 31 in the U.P. Sales Tax Act, 1948, which declared that notwithstanding the option exercised by the assessee the tax would have to be computed in the light of the rates prevailing in 1948-49 as if they were projected upon the turnover of the previous year. This amendment was also given retrospective operation. The assessee contended that the Supreme Court exercised only an advisory jurisdiction and its advice could be tendered only on the question referred in the light of the law as was applicable at the date when the reference was made and it could not give its opinion based on any subsequent amendment of the Act: *Held*, (1) that the view expressed by the Supreme Court had been modified by express legislation operative retrospectively and therefore the liability to tax of the turnover of the previous year which was regarded as the fictional turnover of the year of assessment had to be determined on the basis that the rates applicable in the year of assessment were fictionally projected on the taxable turnover; (2) that the Supreme Court in giving its opinion on the question in the light of the Amending Act was seeking to apply a legislative provision which was, by express enactment, in force at the time when the liability arose, for section 31 enacted by Act III of 1963 was to be deemed to have been in operation at all material times in supersession of the previous rule declared by the Supreme Court. Supreme Court was, therefore, not seeking to apply any law to the question posed before the High Court which was

not in force on the date of the transaction which was the subject-matter of the reference. *Chatturam Horilram Ltd. v. Commissioner of Income-tax, Bihar and Orissa* ([1955] 2 S.C.R. 290; 27 I.T.R. 709) and *Rampur Distillery Chemical Works Ltd. v. Commissioner of Income-tax, U. P.* (I. T. Reference No. 362 of 1958 decided on January 17, 1964) distinguished.—COMMISSIONER OF SALES TAX, U.P. *v.* BIJLI COTTON MILLS, HATHRAS, U. P. [1964] 15 S.T.C. 656 (S.C.).

Reference—*Whether High Court has power to direct manner of disposal of case after answering question*.—Neither the High Court nor the Supreme Court could give directions to the Tribunal, while dealing with a reference, regarding the manner of disposal of a case after the Tribunal received the judgment on the reference.—*THE STATE OF ORISSA v. BABU LAL CHAPPOLIA* [1966] 18 S.T.C. 17 (S.C.).

—*Power of High Court to pronounce upon vires of provision*.—An authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it.—*K. S. VENKATARAMAN AND CO. (P.) LTD. v. THE STATE OF MADRAS* [1966] 17 S.T.C. 418 (S.C.).

—*Challenge to the provisions of the particular Act as ultra vires* cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.—*DHULABHAI v. STATE OF MADHYA PRADESH AND ANOTHER* [1968] 22 S.T.C. 416 (S.C.).

—In a reference to the High Court arising out of an order of the Judge (Revisions) Sales Tax under the U.P. Sales Tax Act, 1948, it is not open to the High Court to pronounce upon the vires of a provision in the Sales Tax Act.—*K. S. Venkataraman & Co. (P.) Ltd. v. The State of Madras* [1966] (17 S.T.C. 418) followed.—*R. B. NARAIN SINGH SUGAR MILLS LTD. v. THE COMMISSIONER OF SALES TAX, U.P.* [1969] 23 S.T.C. 314 (All.).

—Where the question raised is the vires of a provision in the Sales Tax Act or statutory Rules under that Act, the decision on that question will be outside the purview of the hierarchy of tribunals and courts which are constituted under the Act. The principle involved here is that a tribunal, which is a creature of a particular statute, cannot question the very vires of that statute.

The same bar will also affect higher civil courts which have been conferred jurisdiction under the special Act to correct the decision of the lower tribunals.—*THE STATE OF MADRAS v. SRI RAMAKRISHNA MILLS (COIMBATORE) LIMITED* [1969] 24 S.T.C. 274 (Mad.).

—Power to determine validity of provisions.—See also *SUITS infra*.

Powers of High Court under Article 226.—It is not open to the State Legislature to pass a law on the subject of sales tax affecting in any way the powers of the High Court under Article 226.—*ADARSH BHANDAR, ALIGARH v. SALES TAX OFFICER, ALIGARH* [1959] 10 S.T.C. 364 (All.) (F.B.).

Validity of Act—Supreme Court decision on validity of Act—Point not considered or raised before it—Whether can be considered by High Court.—A Supreme Court decision declares the law of the land and as such should be considered to have a seal of finality. Where the Supreme Court has deliberately left open a point, that is another matter, but where it has come to a decision that an Act was *intra vires* the Constitution, such an Act cannot be challenged before a High Court even on a ground which had not been considered by the Supreme Court or not raised before it.—*ASHOKA MARKETING LTD. v. COMMERCIAL TAX OFFICER, CENTRAL SECTION, CALCUTTA, AND OTHERS* [1958] 9 S.T.C. 624 (Cal.).

Effect of declaring certain provision *ultra vires* the Constitution—Appeal to Supreme Court against decision—Jurisdiction of authorities to make assessment under that provision pending decision.—The law declared by the High Court in the State is binding on the authorities or tribunals under its superintendence and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. The petitioners carrying on the business of structural contractors and builders were assessed to sales tax under rule 2(2) of the Bengal Sales Tax Rules, 1941, long after that rule was struck down by the Calcutta High Court as illegal and *ultra vires* the Constitution of India in *Dukhineswar Sarkar & Bros., Ltd. v. Commercial Tax Officer and Others* [1957] (8 S.T.C. 478). The appeal preferred by the State Government against this decision was then pending before the Supreme Court. The Commercial Tax Officer gave the option to the petitioners to pray for stay of the dues till the appeal was decided by the Supreme Court. The Supreme Court subsequently upheld the decision

of the High Court, but the Commercial Tax Officer took no notice of that decision. The petitioners' appeal and revision for relief were dismissed on the ground of delay. The petitioners then filed a petition under Article 226 of the Constitution, but SINHA, J., also rejected the petition on the ground that the petitioners' right of appeal or revision in the courts below had been barred by limitation. On appeal: *Held*, that after rule 2(2) had been declared *ultra vires* and illegal by the High Court, that rule could no longer be described as law and it could not be invoked either for the levy of any tax or for the collection of any tax. Therefore the petition under Article 226 should not have been dismissed. The Commercial Tax Officer should have passed an order in favour of the petitioners and if the State Government wanted to have an opportunity for assessing the petitioners after the decision of its appeal before the Supreme Court, it was for the State Government to make an appeal against the order of the Commercial Tax Officer.—*DINESH CHANDRA BHATTACHARYA AND OTHERS v. MEMBER, BOARD OF REVENUE, WEST BENGAL, AND OTHERS* [1967] 19 S.T.C. 224 (Cal.).

—*Decision of High Court declaring certain provisions of Central Sales Tax Act, 1956, unconstitutional—Stay order obtained from Supreme Court operating only as between parties to appeal—Effect of decision of High Court on other assesseees.*—Where on a writ petition filed under Article 226 of the Constitution, certain sections of the Central Sales Tax Act, 1956, were declared unconstitutional by the High Court and thereupon the State appealed to the Supreme Court and obtained from the Supreme Court a stay order, which operated only as between the parties to the stay petition and the appeal, the decision of the High Court, till it is reversed, has to be given effect to and must be followed by the revenue in the State with respect to assesseees or parties other than those in the appeal pending in the Supreme Court.—*GARLICK AND COMPANY PRIVATE LIMITED, MADRAS-2 v. JOINT COMMERCIAL TAX OFFICER, MOUNT ROAD II DIVISION, MADRAS-2* [1968] 22 S.T.C. 209 (Mad.).

—*Effect of declaration by High Court that section 8-A(4), U.P. Sales Tax Act, 1948, is ultra vires Legislature—Duty of officers.*—All Sales Tax Officers exercising jurisdiction within the territories of State of Uttar Pradesh are subject to the superintendence of the High Court of Uttar Pradesh envisaged by Article 227 of the Constitution and are bound by the declarations of law proceeding from that High Court. The legal effect of the

declaration by the High Court that section 8-A(4) of the U.P. Sales Tax Act, 1948, is *ultra vires* the Legislature is to delete that provision from the statute book. As long as the judgment of the High Court declaring section 8-A(4) *ultra vires* remains undisturbed, the Sales Tax Officer is bound to give effect to the declaration, and he cannot take cover behind the filing of an appeal against that judgment in order to relieve himself of his obligation to do so. The fact that the amount sought to be appropriated by the Sales Tax Officer from the dealer under section 8-A(4) has been recovered by the dealer from its constituents is immaterial. The dealer is entitled to draw the attention of the officer to the declaration of law made by the High Court and contend that the officer is not competent to make the appropriation and only on the refusal of the officer to accept the plea of the dealer that the dealer should approach the High Court under Article 226.—*METAL CONTAINERS PRIVATE LTD. v. STATE OF UTTAR PRADESH AND ANOTHER* [1969] 23 S.T.C. 453 (All.).

Validation of assessments declared invalid by High Court—*Whether impairs powers of High Court under Article 226, Constitution of India.*—Section 6 of the Mysore Sales Tax (Amendment) Act (26 of 1962) which purported to validate assessments which had been declared to be invalid by the High Court was not *ultra vires* the State Legislature. The section did not impair the powers of the High Court under Article 226 or took away the right of an aggrieved party to approach the High Court. The legislative power conferred on the Legislatures under the Constitution includes the subsidiary or auxiliary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed.—*SHA VELJI DEVASHI v. COMMERCIAL TAX OFFICER, HAVERI* [1966] 18 S.T.C. 197 (Mys.).

HINDU UNDIVIDED FAMILY

Hindu joint family—*Whether a unit for purposes of assessment.*—In the case of a Hindu joint family, which is a dealer under the Mysore Sales Tax Act, 1948, its members are the real dealers and at the stage of assessment, whether the family exists without there being disruption of the family status or whether a partition has taken place in that family, it is within the

competence of the Commercial Tax Officer to make an assessment under section 12. In both cases, he would have the power to make an assessment upon the family as if it still exists and if he does so, he does no more than to give effect to the provisions of section 3 under which the family and its members are all liable to pay the tax in respect of the turnover referred to in it, and the quondam members would also be liable to pay the tax determined. The same would be the position even when the collection of the tax has to be made under section 13. What the words "carries on" in section 2(d) of the Act signify is that the dealer should have been carrying on the business of buying or selling goods during the period referable to the relevant assessment year and not that he should be carrying on such business even at the time when the assessment is made. Under the Mysore Sales Tax Act, 1948, a Hindu joint family is not recognised by its provisions as a distinct unit, apart from its members, which can be assessed as a dealer. The Act makes no distinction between a Hindu joint family and the group of members comprising it. For the purposes of the Sales Tax Act the unit which constitutes the dealer and upon whom an assessment may be made is that collection of persons who form the Hindu joint family and who engaged themselves in the family business of buying and selling goods. Although for the purposes of the Hindu law, that collection of persons is a Hindu joint family with peculiar legal incidents, those incidents for the purposes of the Sales Tax Act can have little relevance. Rule 43 of the rules framed under the Mysore Sales Tax Act, 1957, does no more than merely declare what all along was the correct legal position in the case of Hindu joint families. *Commissioner of Income-tax v. Ellis C. Reid* (A.I.R. 1931 Bom. 335) referred to.—*K. S. SUBBARAYAPPA AND SONS v. COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR* [1962] 13 S.T.C. 571 (Mys.).

Carrying on business without registration—Hindu undivided family carrying on business at one place starting business at another place under different name—Branch not registered under Act—Best judgment assessment and imposition of penalty under section 10(5), Bihar Sales Tax Act, 1947—Legality.—*MIRZAMUL PRABHU DAYAL v. THE STATE OF BIHAR* [1957] 8 S.T.C. 508 (Pat.).

—Separate business of member or joint family business—No presumption—Will depend on the facts and circumstances of each case.—*SRI GOPAL SRINIVASA SHENOY v. THE STATE OF MYSORE* [1968] 21 S.T.C. 483 (Mys.).

Recovery of arrears of sales tax—Assessment of Hindu undivided family—Death of karta—Proceedings for recovery of tax by arrest and detention in jail of junior members—Legality.—**PRAHLAD RAI BAIROLIYA AND OTHERS v. UNION OF INDIA AND ANOTHER** [1956] 7 S.T.C. 784 (Pat.).

—Arrears of sales tax—Arrears due from firm—Arrest of son of partner—Legality—Arrears due from Hindu undivided family—Arrest of member of family—Legality—Punjab Land Revenue Act, 1887, Sec. 69.—**S. UJJAL SINGH v. THE EXCISE AND TAXATION OFFICER, AMRITSAR** [1967] 20 S.T.C. 35 (Punj. & Haryana).

Discontinuance of business—Liability of members during period when business was carried on—Madhya Pradesh General Sales Tax Act, 1958, Sec. 33.—**SHRI KISHANCHAND GOVINDRAM v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE** [1967] 19 S.T.C. 465 (M.P.).

—When a Hindu undivided family discontinues its business, under rule 22 of the Andhra Pradesh General Sales Tax Rules, 1957, the members thereof become jointly and severally liable for the tax arrears due from the family.—**CHALLA KISTAIAH v. THE STATE OF ANDHRA PRADESH AND 2 OTHERS** [1967] 20 S.T.C. 73 (A.P.).

—If a joint family has discontinued any business, then, according to section 33(4), the family can be assessed as if there was no discontinuance, and it is only after an assessment is made that every member of the family is liable severally and jointly for the payment of the tax assessed as payable by the family as if he were himself a dealer. If the tax amount cannot be recovered from the member and if the joint family business has been transferred to a firm or association, then the tax payable by a member of the joint family can be recovered from the transferee as laid down in the first proviso to sub-section (4).—**MANGALCHAND AND OTHERS v. SALES TAX OFFICER, NARSINGHPUR, AND ANOTHER** [1966] 17 S.T.C. 226 (M.P.).

Partition and formation of partnership to carry on business—*Liability of quondam members of family or partnership in respect of escaped turnover of family*.—When a joint Hindu family carrying on a business and registered as a dealer effects a partition and thereafter some of the quondam members of the family carry on the business in partnership, neither the members of the joint Hindu family individually nor the partnership can be assessed to sales tax for a turnover which has escaped assessment at the time when the joint Hindu family was assessed to tax,

inasmuch as there is no provision in the Madras General Sales Tax Act, 1959, or the rules framed thereunder for making an assessment on a joint Hindu family after partition. The elements of a transfer do not exist in such a situation and therefore section 27 of the Act will not help the department.—**R. BALUSWAMI CHETTIAR v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUPPUR RURAL, TIRUPPUR** [1968] 21 S.T.C. 412 (Mad).

HIRE-PURCHASE AGREEMENT

Hire-purchase agreement—*Meaning of*.—Explanation (1) to section 2(h) of the East Punjab General Sales Tax Act, 1948, is applicable only to transactions in which there is a transfer of property in goods and it is therefore valid and constitutional. The term "hire-purchase" properly applies only to contracts of hire conferring an option to purchase, but it is often used to describe contracts which are in reality agreements to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all the instalments have been paid. The distinction between these two types of hire-purchase contracts is, however, a most important one, because under the latter type of contract there is a binding obligation on the hirer to buy. The Legislature in Explanation (1) to section 2(h) of the Act has referred only to the second type of hire-purchase contracts which amount to sales. Where the petitioners contended that the nature of hire-purchase contracts entered into by them was such that they did not amount to "sales" within section 2(h), but the respondents did not accept it as correct: *Held*, that the controversy should be determined in accordance with the procedure laid down in the East Punjab General Sales Tax Act, 1948.—**KISHAN PRASAD & Co., LTD v. THE ASSESSING AUTHORITY, AMBALA, AND ANOTHER** [1961] 12 S.T.C. 711 (Punj.).

Hire-purchase agreement—*Whether a contract of sale*—*Validity of Explanation I, section 2(n), Madhya Pradesh Act*.—A hire-purchase agreement is not a contract of sale but a bailment and so long as the bailment continues the property remains in the owner. It is also not a conditional contract of sale as the hirer is not under any obligation to pay the whole price, though he may exercise the option and purchase the chattle hired by him. As under such an agreement the property does not pass to the hirer till the bailment lasts, there is no sale and not even an agreement to sell. The owner hiring out the thing or chattel is not a person who has agreed to sell the goods and the hirer is not a person who has

agreed to buy them within the meaning of sections 2(1), (13) and 30(2) of the Sale of Goods Act, 1930. But a contract of sale as understood in the Sale of Goods Act comes into existence when the hirer, who has obtained possession of the goods under the agreement, becomes the owner of the same after exercising the option to purchase. As the liability to be assessed to sales tax in respect of a transaction of transfer of goods can arise only if there is a transfer of the property in the goods under a contract of sale as understood in the Sale of Goods Act, 1930, a transaction of hire-purchase, which is not a contract of sale but a bailment, cannot be assessed to sales tax at the time the agreement is entered into and till the bailment lasts. It is only when the hirer exercises his option of purchasing the goods and a contract of sale comes into existence that the liability to pay sales tax in respect of the sale transaction can arise. Explanation I to section 2(n) of the Madhya Pradesh General Sales Tax Act, 1958, would be otiose if it were to be construed as meaning only those transaction of hire-purchase where contracts of sale of goods have come into existence as a result of the exercise of option by the hirer of purchasing the goods. Such ripened sale transactions would by their very nature be "sales" under the Sale of Goods Act, 1930, and fall within the substantive definition of "sale" given in section 2(n). It would be wholly unnecessary and inappropriate to describe such sales as fictional sales. The true nature of Explanation I, however, is that it enlarges the definition of "sale" by providing that a transfer of goods on hire-purchase or other instalment system of payment, which is not a sale transaction, shall be deemed to be a sale. It thus sweeps into section 2(n) transactions which are not sale transactions under Sale of Goods Act, 1930. Thus the State Legislature has, while enacting Explanation I, arrogated to itself a power not conferred upon it by entry 54, List II, of the Seventh Schedule of the Constitution. Explanation I to section 2(n) is, therefore, *ultra vires* the State Legislature. The provisions of sections 17, 18(c) and 29 enable the taxing authority to issue a notice not only to a person who admits that he is a dealer under the Act but also to one who denies that he is a dealer. *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* [1958] (9 S.T.C. 353; [1959] S.C.R. 379), *Mithan Lal and Others v. State of Delhi and Others* [1958] (9 S.T.C. 417; [1959] S.C.R. 445) and *Instalment Supply (Private) Ltd. and Another v. The Union of India and Others* [1961] (12 S.T.C. 489; [1962] 2 S.C.R. 644) relied on. *Commercial Credit*

Corporation (1943) Ltd. v. Deputy Commercial Tax Officer, Mount Road, Madras [1958] (9 S.T.C. 599) and *Kishan Prasad & Co., Ltd. v. The Assessing Authority, Ambala, and Another* [1961] (12 S.T.C. 711) dissented from.—*INDIAN FINANCES PRIVATE LTD. v. THE SALES TAX OFFICER, CIRCLE II, JABALPUR, AND ANOTHER* [1964] 15 S.T.C. 254 (M.P.).

—*Whether involves sale.*—Although the object of an hire-purchase arrangement is the obtaining of credit, if the method employed constitutes a sale, then the transaction is not only the lending of the money but also a purchase of the goods: *Held*, that in the present case, under the arrangements between the assessee-company and its customers there was a sale by the customers to the assessee at the commencement of those arrangements and a resale by the assessee to the customers at the termination thereof and that those resales attracted sales tax under the General Sales Tax Act, 1125.—*SUNDARAM FINANCE LIMITED v. THE STATE OF KERALA AND ANOTHER* [1964] 15 S.T.C. 228 (Ker.) reversed in [1966] 17 S.T.C. 489 (S.C.). See below :—

—*Financing company—Loan to purchaser of motor vehicle*—"Sale letter" and hire-purchase agreement executed by purchaser—*Vehicle continuing throughout in the name of purchaser—Repayment of loan extinguishing rights of financing company—Whether sale of goods—Liability to sales tax.*—The appellant-company was carrying on the business of financing purchases of motor vehicles on the security of those vehicles. The scheme adopted by the appellant-company was that the customer, who purchased the motor vehicle from the dealer directly, paying part of the price therefor, applied to the appellant for a loan of the balance of the price to be paid by the appellant directly to the dealer. The appellant paid the amount and as security for repayment thereof took a promissory note, a "sale letter" reciting that the customer had, on the date of his application for loan, sold the motor vehicle to the appellant, a bill and a receipt for the amount describing it as the value of the vehicle sold to the appellant, an undertaking to keep the vehicle insured against comprehensive risks, an agreement called the hire-purchase agreement, under which the appellant as "owner" agreed to let out to the customer as "hirer", and the customer agreed to take on hire the motor vehicle for a specific term, and also a letter to the motor vehicle authority informing it that the vehicle was the subject-matter of a hire-purchase agreement between the customer as owner and the appellant, and requesting it to make a note thereof in the registration certificate

standing in the name of the customer. Under the agreement of hire-purchase the customer agreed to pay the stipulated rent, to take proper care of the vehicle, to keep it insured and not to assign, sell, pledge, charge or underlet it or part with possession thereof. The agreement was to stand determined, and the appellant could seize the vehicle and take possession thereof, on the happening of certain specified contingencies such as failure of the customer to pay any instalment of hire in time, or his breaking or failing to perform or observe any conditions of the agreement. Upon determination of the agreement all instalments previously paid were to be forfeited. Under clause (6) of the agreement on the customer paying the entire amounts due the vehicle became the sole and absolute property of the customer. The question was whether when by operation of clause (6) of the agreement the rights of the appellant were extinguished there resulted a sale of the vehicle in favour of the customer which was taxable under the Travancore-Cochin General Sales Tax Act, 1125 M.E.: *Held*, per SHAH and SIKRI, JJ. (SUBBA RAO, J., dissenting), that the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loans advanced to the customer and no real sale of the vehicle was intended by the customer to the appellant. The motor vehicle purchased by the customer was and remained at all material times registered in his name. The so-called "sale letter" was merely a formal document which was not made effective by registering the vehicle in the name of the appellant. The appellant's right to seize the vehicle was merely a licence to ensure compliance with the terms of the hire-purchase agreement. The transaction was merely a financing transaction and there was no sale when the rights of the appellant under the agreement were extinguished by operation of clause (6). Per SUBBA RAO, J. (dissenting): The transactions were hire-purchase agreements. The financier purchased the vehicle for the amounts required to be paid to the dealer and entered into specific hire-purchase agreements with the customer. Neither the fact that the agreements were entered into because the customer had no funds to purchase the vehicle nor the circumstance that part of the consideration was already paid to the dealer affected the nature of the transaction. The fact that the customer executed a promissory note for the money advanced by the appellant did not affect the question, for that was merged in the hire-purchase transaction. If the agreement fructified into a sale it was liable to sales tax. Decision of the Kerala High Court in *Sundaram Finance*

Ltd. v. State of Karala [1964] (15 S.T.C. 228) reversed.—*SUNDARAM FINANCE LTD. v. THE STATE OF KERALA AND ANOTHER* [1966] 17 S.T.C. 489 (S.C.).

"Hire-purchase agreement or sale on deferred payments"—*Tests to determine*.—A mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire-purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories, and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire-purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire-purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire-purchase depending upon the terms agreed between the parties. For the purpose of determining as to which category a particular contract comes under, the Court will look at the substance of the agreement and not at the mere words describing the category. One of the tests to determine the question whether a particular agreement is a contract of mere hiring or whether it is a contract of purchase on a system of deferred payments of the purchase price is whether there is any binding obligation on the hirer to purchase the goods. Another useful test to determine such a controversy is whether there is a right reserved to the hirer to return the goods at any time during the subsistence of the contract. If there is such a right reserved, then clearly there is no contract of sale.—*DAMODAR VALLEY CORPORATION v. THE STATE OF BIHAR* [1961] 12 S.T.C. 102 (S.C.).

Hire-purchase agreement—Levy of sales tax—Legality—"Sale", meaning of—Validity of Explanation 1 to section 2(g), Bengal Finance (Sales Tax) Act, 1941.—The State Legislature has not the power to enlarge the meaning of the words "sale of goods" by going beyond the meaning attached to it by its definition in the Sale of Goods Act, 1930, because it is in that sense that these words were used in item 48 of Schedule VII of the Constitution Act, 1935. Where there is an infringement of the rights of a citizen by levying a tax which is *ultra vires* of the Legislature the remedy under Article 226 is available to him. The petitioner-company carrying on the business

of financing purchases of vehicles entered into agreements with persons who wished to purchase such vehicles. Under the agreement the company as owner agreed to let and the person as hirer agreed to hire the vehicle on conditions, *inter alia*, that the hirer should pay a certain sum as consideration for the option to purchase and further should make an initial deposit by way of premium which was to be the absolute property of the owner and that on the payment of all the instalments by the hirer, the vehicle at the option of the hirer was to become his absolute property: *Held*, that the transaction entered into by the petitioner was not a "sale" within the meaning of that word as used in entry 54 of the Constitution and that the State Government was not competent to levy sales tax on the instalments paid to the petitioner on the basis of Explanation 1 to section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the State of Delhi.—*THE INSTALMENT SUPPLY LIMITED v. STATE OF DELHI AND OTHERS* [1956] 7 S.T.C. 586 (Punj.).

—*Hire-purchase agreement—Levy of sales tax—Legality.*—The definition of "sale" in the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, includes not only what may be compendiously described as a sale under the Sale of Goods Act, 1930, but also transactions, which, strictly speaking, are not sales, not even "contracts of sale", but only contain an element of sale, that is an option to purchase. The explanation to the definition has included within its amplitude a mere transfer of goods without the transfer of title to the goods, if it is in the course of an agreement of the nature of "hire-purchase" or other instalment system of payment. The *non obstante* clause in the explanation has been added only to emphasise the categorical statement of the law contained in the main clause to the effect that a transfer of goods on hire-purchase, etc., shall be deemed to be a "sale" even though there may be a stipulation to the effect that in spite of the transfer of goods to the hirer, the owner retains title to those goods until the happening of the ultimate event, namely, completion of title at the option of the hirer. The petitioner-company carrying on in Delhi the business of financing the purchase of motor vehicles advanced the necessary finance to persons desiring to purchase motor vehicles. Under the agreement the company charged the "hirer" as a consideration for granting the lease of the vehicle, an initial deposit by way of premium, which became the absolute property of the company. The "hirer" undertook to pay the stipulated

instalments and when all the instalments were paid, the vehicle became the property of the "hirer" at his option, on payment of one rupee to the company, as a consideration for the option. Until all the instalments were paid and the option exercised the vehicle remained the property of the company as owners. The "hirer" was delivered possession of the vehicle and he remained responsible to the company for damage or destruction or loss. Until the option of purchase was exercised by the "hirer", he was at liberty to return the vehicle and to put an end to the hiring agreement. The Sales Tax Authorities demanded sales tax on the transaction on the ground that the instalments paid by the hirer to the company were sale-price and, therefore, liable to sales tax. The company filed in the Punjab High Court a petition under Article 226 of the Constitution and contended that the law imposing sales tax on such transactions was beyond the competence of the Legislature. The High Court held that the State Legislature had not the power to enlarge the meaning of the words "sale of goods" by going beyond the meaning attached to it by the Sale of Goods Act and allowed the petition [*vide Instalment Supply Limited v. State of Delhi* [1956] (7 S.T.C. 586)]. A settlement was then arrived at between the companies carrying on hire-purchase business in Delhi and the Commissioner of Sales Tax, who issued Circular No. 10 of 1956. Subsequently in *Milhan Lal v. State of Delhi* [1958] (9 S.T.C. 417) the Supreme Court held that the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi was enacted by the Parliament and it was within the competence of the Parliament to extend the meaning of the word "sale". The Commissioner thereupon issued a circular stating that the provision regarding levying of sales tax on hire-purchase transactions was valid and, in pursuance of this circular, the petitioner-company was called upon to comply with the requirements of the Act. The company made some unsuccessful representations and ultimately filed a petition in the Supreme Court under Article 32 of the Constitution and raised the following contentions: (1) that the transactions in respect of which the petitioner-company was sought to be taxed were not covered by the explanation to section 2(g); (2) that if the explanation covered the transactions, as it extended the concept of "sale", it was unconstitutional; (3) that in any case the explanation was unconstitutional as it infringed Article 14 of the Constitution in so far as the State of Delhi had been selected for hostile discrimination; (4) that the judgment of the Punjab High Court in *Instalment Supply Ltd. v.*

State of Delhi was final and conclusive as between the parties to that judgment; (5) that if the judgment of the Punjab High Court had been superseded by the judgment of the Supreme Court in *Mithan Lal's* case it could not be given retrospective operation; and (6) that the settlement between the department and companies transacting business in "hire-purchase" was binding until the decision in *Mithan Lal's* case: *Held*, (1) that the agreement entered into by the petitioner did contain not only a contract of bailment *simpliciter* but also an element of sale which element had been seized upon by the Legislature for the purpose of subjecting the transaction to sales tax; (2) that in view of the decision of the Supreme Court in *Mithan Lal's* case, the explanation extending the definition of "sale" was not unconstitutional; (3) that the extended definition of "sale" did not infringe Article 14 of the Constitution, inasmuch as no proper foundation was laid in the pleadings for supporting such a contention and hire-purchase transactions had been included within the definition of "sale" for the purpose of Central sales tax which was applicable throughout India; (4) that it could not be said that the department had, in any sense estopped itself by issuing instructions or that the Supreme Court by laying down the law in *Mithan Lal's* case had laid down a new rule of law which had no application to pending proceedings for levy, assessment and realisation of sales tax, either in Delhi or elsewhere. The department issued its instructions to the Sales Tax Officers, in conformity with the law as laid down in the judgment of the Punjab High Court in *Instalment Supply Ltd. v. State of Delhi*, and when the Supreme Court later laid down the law more authoritatively in *Mithan Lal's* case, the department was bound to take notice of what the Supreme Court had laid down; (5) that in matters of taxation there is no question of *res judicata* because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period.—*INSTALMENT SUPPLY (PRIVATE) LTD. AND ANOTHER v. THE UNION OF INDIA AND OTHERS* [1961] 12 S.T.C. 489 (S.C.).

"Hire-purchase or other instalment system of payment"—*Agreement for hire or hire-purchase system—Distinction—Transaction between assessee and engineering contractors—Whether hire-purchase system—Liability to sales tax.*—The word "sale" in its legal sense imports passing of the property in goods and it is in this sense that the word is used in the Sale of Goods Act. Under that Act, a sale of goods and an agreement for sale of

goods are treated as two distinct and separate matters, the vital point of distinction between them being that whereas in the sale there is a transfer of property in the goods from the seller to the buyer, there is none in an agreement to sell. In the Bihar Sales Tax Act, 1947, the definition of sale has been enlarged and extended so as to include even a "hire-purchase or other instalment system of payment", although title in the goods is to pass at a future date on the full payment of the instalments. The assessee, Damodar Valley Corporation, entered into an agreement with two companies carrying on the business of engineering contractors for the construction of a dam. Under the agreement the assessee agreed to supply to the contractors certain machineries on hire; but the actual price paid by the assessee including cost of transport and other similar charges was to be charged to the contractors. The assessee further agreed to take over from the contractors these machineries after completion of the work at their "residual value" which was to be calculated in a certain manner. The contractors were made responsible for maintaining the equipments at their own cost and could not remove the equipments from the site until the full cost thereof had been recovered by the assessee from them. The assessee contended that the machineries had only been hired to the contractors who were required to pay certain amount by way of depreciation and, therefore, the transaction did not amount to a "sale" within the meaning of the Act: *Held*, that the transaction partook the nature of a hire-purchase system and therefore amounted to a "sale" within the meaning of section 2(g) of the Act. *Bhimji N. Dalal v. Bombay Trust Corporation* [1930] (A.I.R. 1930 Bom. 306; I.L.R. 54 Bom. 381) relied on.—*DAMODAR VALLEY CORPORATION v. THE STATE OF BIHAR* [1957] 8 S.T.C. 47 (Pat.) affirmed by Supreme Court. See below :—

—*Construction of dam—Supply of machineries to contractors—Whether transaction contract of hiring or sale.*—The appellant, the Damodar Valley Corporation, entered into an agreement with two engineering contractors for the construction of a dam. Under the agreement the appellant agreed to make available to the contractors such equipment as was necessary and suitable for that construction; but the contractors were to be charged the actual price paid by the appellant for the equipment and machinery thus made available, inclusive of freight and customs duty, if any, as also the cost of transport, but excluding sales tax. The machineries were to remain the property of the appellant until the full price

thereof had been realised from the contractors. The appellant agreed to take over from the contractors some of the machineries after completion of the work at their "residual value" which was to be calculated in a certain manner; but this was not an unconditional term. The appellant was bound to take them over only if it was satisfied that their "residual life" was not less than the standard life fixed by the parties. The contractors were made responsible for maintaining the equipments in 'good running condition and could not remove the equipments from site until the full cost thereof had been recovered from them and thereafter their removal was not likely to impede the satisfactory prosecution of the work. The contractors had to replenish their stock of spare parts of machineries made available to them by the appellant and when spare parts were supplied to the contractors by the appellant, the contractors were liable for the actual price of those parts inclusive of freight, insurance and customs duty. The question was whether the transaction between the parties was a mere contract of hiring or a sale within the meaning of section 2(g) of the Bihar Sales Tax Act, 1947: *Held*, that the transaction was a sale on deferred payments with an option to repurchase and not a mere contract of hiring and it was therefore liable to sales tax. *Damodar Valley Corporation v. The State of Bihar* [1957] (8 S.T.C. 47) affirmed. *Helby v. Mathews and Others* ([1895] A.C. 471) referred to.—*DAMODAR VALLEY CORPORATION v. THE STATE OF BIHAR* [1961] 12 S.T.C. 102 (S.C.).

Sale of cars—Purchaser paying part of price—Balance paid by third party with whom purchaser entered into agreement for payment of monthly instalments together with interest—Transaction between purchaser and third party—Whether sale.—A company was selling motor cars to certain individuals who paid a part of the purchase price. In order to pay off the balance of the purchase price the petitioners advanced money to the purchasers, who executed an agreement with them for the monthly payment of certain instalments together with interest. The company issued *pro forma* bills in two different ways. In some cases they showed the cars as being sold to the actual purchasers, while in other cases they were shown as sold to the petitioners. The company however instructed the motor vehicles department to register the actual purchasers as the owners for the purposes of the Motor Vehicles Act with a note that the car was held under a sale-purchase agreement with the petitioners: *Held*, that the transaction between the petitioners

and the actual purchasers of motor cars was not one of hire-purchase and did not come under the definition of "sale" in the Bengal Finance (Sales Tax) Act, 1941. The actual purchaser of the motor car was just a mortgagor and the petitioners were a mortgagee in respect of the motor car sold by the company to the purchaser. Even if the question whether explanation 1 to section 2(g) was *ultra vires* the Constitution of India arose in the case, it was for the High Court to decide the question and not for the Board of Revenue who had no power to decide it.—*UNION CREDIT CORPORATION LTD. v. STATE OF WEST BENGAL* [1955] 6 S.T.C. 246.

Hire-purchase agreement—Nature of transaction—Whether sale is involved—Liability of finance company to pay sales tax.—The nature of the transaction between the petitioners, who were a finance company, and persons who purchased motor vehicles with financial assistance from the petitioners was as follows:—The customer, after selecting the vehicle and fixing the price with the dealer approached the petitioners, paid a deposit to them and executed a hire-purchase agreement. The agreement provided for the value of the vehicle and other charges incurred by the petitioners being recoverable from the customer in a certain number of equal monthly instalments. The customer then paid a part of the purchase price to the dealer and obtained delivery of the vehicle. The petitioners paid to the dealer the balance of the price. The dealer who was charged to sales tax on this transaction collected the tax from the customer. The registration of the vehicle was in the name of the customer as "owner" with the petitioner's name endorsed as "hire-purchase company". The question was whether the petitioners were liable to pay sales tax on the transaction on the ground that the hire-purchase agreement amounted to a sale: *Held*, (1) that the transactions of hire-purchase entered into by the petitioners constituted sales rendering them liable to sales tax on their turnover excepting in cases where owing to the default on the part of the customer in the payment of the instalments the vehicle was seized by the petitioners and therefore no title passed to the customer; (2) that these transactions of "hire-purchase" could, having regard to their main intent and purpose, be treated as sales at the moment the agreements were entered into, subject to adjustment by the elimination of such portion of the turnover where no sale resulted; (3) that for the purpose of computing the turnover of the petitioners, the total of the "hire" stipulated to be paid in instalments should be treated as

the price or consideration for the sale. The course of dealing between another finance company and customers was as follows:—The customer paid the entire price of the vehicle to the dealer by obtaining a loan for a part of the purchase price from the finance company on the security of the vehicle. The customer then effected a sale of the car to the finance company for the amount of the loan granted by it and then executed the usual hire-purchase agreement. In the account books of the finance company the transaction was shown as "loan account" and in the letters written by it to the customer the transaction was described as "loan on hire-purchase". The question was whether the transaction between the customer and the finance company was merely a transaction of financing to enable the customer to purchase the vehicle from the dealer or whether any element of sale was involved in it to bring it within the legislative entry: *Held*, that the transfer of title to the finance company was necessary to be sufficiently real in order to enable the hire-purchase agreement to be entered into, and the hire-purchase agreement itself was the mode by which the property in the vehicle got re-transferred to the customer. The stipulations in the hire-purchase agreement were not terms on which the hypotheca was redeemed but a true purchase agreement by which the customer acquired title to the vehicle. Barring those instances where owing to default of customers, the "purchase" did not go through, they were sales within section 2(h) effected by the finance company which brought it within the definition of "dealer" subject to tax under section 3(1). Explanation 4 to the definition of "sale" has reference to cases where there are really no two sales before the customer becomes the owner and it does not cover a case where the essence of the transaction consists in the intermediate dealer becoming an owner before the property passes to the customer. It is a generally accepted principle of constitutional interpretation that in interpreting a constituent and organic statute that construction most beneficial to the widest amplitude of the power of the Legislature must be adopted. But even applying this principle it could not be said that the expression "sale" in the Constitution was meant to designate a transaction which in the ordinary acceptance of the term would not amount to a "sale". It might very well be that the nice distinctions between a sale and an exchange might not apply to determine the scope of the expression in the Constitution. But that apart, when the Constitution confers a power with reference to a specified transaction which has

well-known incidents, it would not be interpretation but legislation to hold that within that power was included that transaction as well as others, which in essence were entirely distinct from it and created between the parties to it not the relation of buyer and seller but quite a different one, of bailor and bailee.—*COMMERCIAL CREDIT CORPORATION (1943) LTD. v. DEPUTY COMMERCIAL TAX OFFICER, MOUNT ROAD, MADRAS [1958] 9 S.T.C. 599 (Mad.)* partly reserved in [1965] 16 S.T.C. 213 (S.C.). See below.

—*Hire-purchase agreement—Nature of transaction—Validity of Explanation 1 to section 2(h), Madras 1939 Act—Purchase of motor vehicle on hire-purchase basis—Whether finance company liable to sales tax at the time agreement is entered into or only when option is exercised by hirer—Method of arriving at value of vehicle when option is exercised—"Sale"—Meaning of.*—The State Legislature when it proceeds to legislate either under entry 48 of List II of the Seventh Schedule to the Government of India Act, 1935, or under entry 54 of List II of the Seventh Schedule to the Constitution, can only tax "sale" within the meaning of that word as defined in the Indian Sale of Goods Act, 1930. The essence of sale under the Sale of Goods Act is that the property should pass from the seller to the buyer when a contract of sale is made except in a case of conditional sale. Therefore, any legislation by the State Legislature making any agreement or transaction in which the property does not pass from the seller to the buyer a "sale" would be beyond its legislative competence. Hire-purchase agreements are not conditional sales. A hire-purchase agreement has two elements: (1) element of bailment, and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. The taxable event under the Act is the sale of goods and until that taxable event takes place there can be no liability to pay tax. Therefore though eventually most cases of hire-purchase may result in sales by the exercise of the option and the fulfilment of the terms of the agreement, tax is not exigible at the time when the hire-purchase agreement is made, for at that time the taxable event has not taken place; it can only be exigible when the option has been exercised and all the terms of the agreement fulfilled and the sale actually takes place. The applicability of Explanation 1 to section 2(h) of the Madras General Sales Tax Act, 1939, is not to be confined to those cases where the property does eventually pass from the seller to the buyer.

The intention of the Legislature in enacting the explanation was to provide that the hire-purchase agreement shall be deemed to be a sale on the very date on which it is made, even though no property passes from the seller to the buyer on that date. Taking into account the purpose, the intention and the interpretation of explanation 1, it is beyond the competence of the State Legislature and is therefore invalid. The view taken by the Supreme Court in *State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.* ([1959] S.C.R. 379; 9 S.T.C. 353) does not require reconsideration. The appellant was a financing company and its main business was to advance money to persons who purchased motor vehicles but were themselves not in a position to find ready money to pay the price. A person desirous of acquiring a motor vehicle made the selection of the vehicle, fixed its price with the motor dealer and then approached the appellant for financial assistance on a hire-purchase basis. Sometimes an initial payment was made to the motor dealer which was taken into account at the time of hire-purchase agreement, while at others the payment was made in number of instalments to the appellant. In either case the appellant paid the price or the balance thereof to the dealer and thereafter the hire-purchase agreement was entered into between the appellant and the person purchasing the motor vehicle. The agreement provided, *inter alia*, that the owner (the appellant) would let and the hirer (the person who wanted to purchase the vehicle) would take on hire the vehicle for a certain period. The hirer had to pay, during the period of hire, the monthly instalments, keep the vehicle in good condition, pay all taxes, licence fees, and other charges payable in respect of the vehicle and could not sell, charge, pledge or part with possession of the vehicle. If the hirer made default in the payment of any rent for seven days, the hiring was to determine immediately and the owner might, without notice, retake possession of the vehicle. Clause 20 of the agreement provided as follows:—"If the hirer shall duly observe and perform all the conditions and stipulations herein contained and on his part to be observed and performed and shall duly pay to the owner all rents hereby reserved during the term of hiring together with all other sums, if any, payable by him to the owner under the provisions of this agreement, then and at the termination of the hiring, the hirer may purchase the vehicle from the owner for a sum of Re. 1." The vehicle was registered in the name of the owner and the hirer was forbidden to represent himself as the owner thereof. The Sales Tax Authorities assessed the appellant to sales tax on

the ground that the hire-purchase transactions were sales liable to sales tax at the time the agreements were entered into. The appellant filed writ petitions in the High Court and contended that the levy of sales tax in respect of hire-purchase transactions was illegal and unconstitutional as explanation 1 to section 2(h) of the Madras General Sales Tax Act, 1939, defining "sale" was beyond the competence of the State Legislature. The High Court held: (1) that the transactions of hire-purchase entered into by the appellant constituted sales, rendering it liable to sales tax on its turnover, excepting in cases where owing to the default on the part of the hirer in the payment of instalments of hire, the vehicle was seized by the appellant and therefore no title passed to the intending purchaser; (2) that the transactions of hire-purchase could, having regard to their main intent and purpose, be treated as sales at the moment the agreements were entered into, subject to adjustment by elimination of such portion of the turnover where no sale resulted; (3) that for the purpose of computing the turnover of the appellant, the total of the hire stipulated to be paid in instalments should be treated as a price or consideration for the sale. On appeal to the Supreme Court: *Held*, (1) that the High Court was right in holding that as there were two sales involved in the transaction, and the Act levied a multi-point tax on sales, tax could be levied when the appellant sold the vehicle to the intending purchaser; (2) that the High Court was however in error in holding that the transactions could be treated as sales at the time the agreement was entered into. Sales took place only when the option was exercised after all the terms of the agreement were fulfilled and it was at that time that the tax was exigible; (3) that the value of the vehicle when the option was exercised by the hirer was neither Re. 1 which was the nominal amount to be paid for the option nor the entire amount which was paid as hire including Re. 1. In order to arrive at the value at the time of the second sale to the hirer, the Sales Tax Authorities should take into consideration the depreciation of the vehicle and such other matters as might be relevant in arriving at such price on which the sale could be said to have taken place when the option was exercised, but that price must always be less than the original price. [True nature of the payment made as hire and the method to arrive at the value of the vehicle by the Sales Tax Authorities at the time the option was exercised by the hirer indicated.] The Central Sales Tax Act, 1956, was passed by Parliament and its validity has to be considered not only

with reference to entry 92-A of List I of the Seventh Schedule to the Constitution but also with reference to Article 248(2) read with entry 97 of List I. The fact that the definition of "sale" in the Central Act includes words contained in Explanation 1 therefore is of no help in construing the meaning of the words "sale of goods", which have been authoritatively pronounced upon by the Supreme Court in *Gannon Dunkerley's case* ([1959] S.C.R. 379; 9 S.T.C. 353) following *Budh Prakash's case* [1954] (5 S.T.C. 193). Decision of the Madras High Court in *Commercial Credit Corporation (1943) Ltd. v. Deputy Commercial Tax Officer, Mount Road, Madras* [1958] (9 S.T.C. 599) partly reversed.—*K. L. JOHAR AND CO. v. DEPUTY COMMERCIAL TAX OFFICER, COIMBATORE III, AND OTHERS* [1965] 16 S.T.C. 213 (S.C.).

—*Hire-purchase agreements—Validity of Explanation 1 to section 2 (t), Mysore Sales Tax Act, 1957.*—Explanation 1 to section 2(t) of the Mysore Sales Tax Act, 1957, which makes hire-purchase transactions liable to sales tax is void and inoperative. *K. L. Johar & Co. v. Deputy Commercial Tax Officer, Coimbatore III* [1965] (16 S.T.C. 213) followed.—*IRON & STEEL INDUSTRIAL CO-OPERATIVE SOCIETY v. STATE OF MYSORE* [1965] 16 S.T.C. 643 (Mys.).

—*Hire-purchase agreement—Nature of transaction—Validity of Explanation (1) to section 2(j), Kerala General Sales Tax Act, 1125.*—Explanation (1) to section 2(j) of the Kerala General Sales Tax Act, 1125, which provides that a transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale, is beyond the competence of the State Legislature and is invalid. A hire-purchase agreement has two elements: (1) the element of bailment and (2) the element of sale, in the sense that it contemplates an eventual sale. The element of sale in the transaction fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then have been hired. When this sale takes place it will be liable to sales tax under the Act for the taxable event under the Act is the taking place of the sale (the Act having provided for a multipoint sales tax at the relevant time). As the taxable event is the sale of goods the tax can only be levied when the option is exercised after fulfilling all the terms of the hire-purchase agreement. The tax is not exigible at

the time when the hire-purchase agreement is made, for at that time the taxable event has not taken place. *K. L. Johar and Co. v. Deputy Commercial Tax Officer, Coimbatore III* ([1965] 2 S.C.R. 112; 16 S.T.C. 213) applied. *Instalment Supply (Private) Ltd. v. The Union of India* ([1962] 2 S.C.R. 644; 12 S.T.C. 489) distinguished. *Damodar Valley Corporation v. The State of Bihar* ([1961] 2 S.C.R. 522; 12 S.T.C. 102), *Mithan Lal v. The State of Delhi* ([1959] S.C.R. 445; 9 S.T.C. 417) and *The State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* ([1959] S.C.R. 379; 9 S.T.C. 353) referred to.—*MARIKAR (MOTORS) LTD., TRIVANDRUM v. SALES TAX OFFICER, SPECIAL CIRCLE, TRIVANDRUM* [1967] 19 S.T.C. 18 (S.C.).

—*Hire-purchase agreement—Transaction commencing with a proposal for financing and ending in the usual hire-purchase agreement—Liability to sales tax—Whether transactions casual sales.*—The assessee, a firm holding a registration certificate under the Bombay Sales Tax Act, entered into certain transactions with four persons to finance purchases of motor vehicles from a motor dealer. In these transactions, the persons described in the agreement as hirers selected the vehicle proposed to be purchased and made a proposal to the assessee for a loan to put through that purchase and executed a promissory note in favour of the assessee. They also entered into, on the basis of that proposal, an agreement whereunder they agreed that though the purchase was to be made by them from the motor dealer, the property in the vehicle was to pass to and remain in the assessee, who were for all practical purposes and also for the road transport records to be the owners of the vehicle until all the instalments and other moneys due by them to the assessee were paid and they exercised the option to purchase the vehicle for which the consideration fixed was Re. 1. In the case of three out of the four transactions, the hirers paid all the instalments under the agreements and exercised the option to purchase the vehicles. The Sales Tax Officer treated the transactions as sales of motor vehicles and assessed them to sales tax under the Bombay Sales Tax Act, 1959. The assessee contended (1) that the transactions were merely financing agreements though the agreements were in the form of hire-purchase agreements and therefore they did not fall within the definition of "sale" as defined by section 2(28) of the Bombay Sales Tax Act, 1959; (2) that even if the transactions were sales, the business of the assessee being in piece-goods, they were casual sales and therefore the assessee could not be said to be dealers in motor vehicles. It was found that the accounts of the assessee were made on the basis

that the transactions were hire-purchase agreements: *Held*, (1) that though the transactions might be said to have commenced with the proposal for financing, in fact and in substance, it was up to certain stage a hiring agreement ultimately ending, on payment of all instalments and the exercise of option provided therein by the hirers, in a sale assessable to tax under the Bombay Sales Tax Act, 1959; (2) that the transactions had the features giving to them the distinctive character of a business and therefore they could not be regarded as merely occasional sales; (3) that therefore the assessee was rightly assessed to sales tax. *Johar & Co. v. Deputy Commercial Tax Officer* [1965] (16 S.T.C. 213) followed. *Ambika Mills Ltd. v. State of Gujarat* [1964] (15 S.T.C. 367) referred to.—*BHOGILAL LAXMICHAND v. THE STATE OF GUJARAT* [1966] 18 S.T.C. 141 (Guj.).

Unpaid instalments—Goods returned and unpaid instalments ceasing to be payable—Date on which deductions can be claimed.—In the case of a transaction of sale in the form of a hire-purchase agreement, where the goods themselves are returned to the seller and the unpaid instalments of the purchase money cease to be payable under the terms of the agreement, the seller is entitled to claim under rule 5(1)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the total of the unpaid instalments as an "allowance" made within the meaning of rule 5(1)(b), provided that factually the liability for the unpaid purchase money is terminated and the transaction is shown in the accounts. The length of the interval between the sale and the return of the goods is not a relevant factor in deciding whether the requirements of the rule have been satisfied by an assessee. If an allowance is made against the goods returned the deduction can be claimed only in the year in which that allowance has been made. The assessee however is not entitled to claim that the entire sale price has been allowed within the meaning of rule 5(1)(b) and that whatever was collected and retained by the assessee represented only the hire. *Commercial Credit Corporation v. Deputy Commercial Tax Officer* [1958] (9 S.T.C. 599) referred to.—*DEVI FILMS (PRIVATE) LTD., MADRAS v. THE STATE OF MADRAS* [1961] 12 S.T.C. 274 (Mad.).

HORTICULTURE

(See AGRICULTURAL or HORTICULTURAL PRODUCE).

HOTELS

(See also BOARDING HOUSE and BEST JUDGMENT ASSESSMENT).

Best judgment assessment—Feeding charges of servants not taken into account—Power of Commissioner to revise assessment.—*B. SANJEEVA RAO v. COMMISSIONER OF COMMERCIAL TAXES* [1963] 14 S.T.C. 267 (Mys.).

—Assessment of restaurants—Rejection of accounts on the sole ground that they are not maintained in accordance with rules—Best judgment assessment—Legality—Formula adopted by officer in arriving at turnover—Whether arbitrary. —See *RANGAPPA PANDURANG KAMATH v. STATE OF MYSORE* [1962] 13 S.T.C. 714 (Mys.) (see page 6 *supra*).

Determination of turnover—General principle of adding 50 per cent. to the purchase value—Validity.—In the case of hotel business, where the accounts have to be rejected and best judgment assessments have to be made by the Sales Tax Authorities, the general principle of adding 50 per cent. to the purchase value should not uniformly be adopted in all the cases, because some of the hotels may be earning more than 50 per cent. gross profit and others a lesser percentage. The gross profit is dependent upon so many factors, most of them of incalculable effect, such as the location, the nature of the clientele, the tastes catered for and the like. It will be proper for the department to carry out investigation by conducting sample surveys of all types of hotels in order to fix the gross output in the absence of correct account books. "Certainty" is one of the established canons of taxation and it is the duty of the tax authorities to aim at it. [Maintenance of a research bureau or invoking the aid of independent research organisations by the department to undertake investigations to arrive at the correct relationships between inputs and outputs in various trades subject to levy of tax, suggested.] *Commissioner of Income-tax v. Laxminarain Badridas* [1937] (5 I.T.R. 170) referred to.—*A.P. PYARELAL v. THE STATE OF MADRAS* [1964] 15 S.T.C. 9 (Mad.).

Estimation of profits—Principle applicable.—See *P. NARAYANAPPA v. THE STATE OF MYSORE* [1962] 13 S.T.C. 993 (Mys.) (see pages 7-8 *supra*).

Classification of dealers in articles of food and drink sold in hotel, boarding house or restaurant—Whether discriminatory.—See pages 137 to 139 *supra*.

Hotel-keepers—Compounding of tax at uniform rate on graduated percentage of dealer's turnover according to sliding scale—Classification whether discriminatory.—*K. S. VASUDEVAN v. STATE OF ORISSA* [1963] 14 S.T.C. 220 (Ori.).

Hotel business—Lease of business premises and utensils on daily rent—Whether transfer of business.—*STATE OF ORISSA v. EPILLI ANANTA PATRA* [1963] 14 S.T.C. 109 (Ori.).

Exemption—Railway stall selling tea and light refreshments—Whether entitled to exemption—"Cooked food", Meaning of—Whether includes tea, coffee, biscuits and cakes.—*MOTILAL LAXMIDAS AND CO. v. THE STATE OF BOMBAY* [1951] 2 S.T.C. 153.

—Scope of items 49 and 50, Schedule B, East Punjab General Sales Tax Act (XLVI of 1948)—Maintainability of petition under Article 226, Constitution of India.—*GREEN HOTEL AND RESTAURANT v. ASSESSING AUTHORITY, PATIALA, AND OTHERS* [1961] 12 S.T.C. 603 (Punj.).

—Cooked food and non-alcoholic drinks—Scope of entry 14, Schedule A, Bombay Sales Tax Act, 1959—"Outside" the hotel premises—Meaning of—Cooked food served at customers' premises—Whether exempt.—*GOVINDSHRAM HOTEL v. THE STATE OF GUJARAT* [1966] 17 S.T.C. 100 (Guj.).

Hotelier—Consolidated charge realised by hotelier from resident clients—Approximate cost of food—Whether liable to sales tax—Nature of transaction.—Hoteliers who make one consolidated charge for providing their clients with residential accommodation, services, lines, food, etc., and who do not allow any rebate if food is not eaten or served, do not transfer the food to their customers for consideration so as to attract the provisions of section 2(h) of the Punjab General Sales Tax Act, 1948. Restaurant sales to non-residents and sales of packed food to customers are however sales taxable under the Act. Whenever the taxing authorities contend that the transfer of certain movables in the course of discharge of mutual obligations in a contract amounts to a sale the burden would lie heavily upon the taxing authorities to show that there has in fact been a taxable sale. Such burden is not discharged by merely showing that some movables have passed from the alleged seller to the alleged buyer in the course of the supposed sale in performing an overall service or in execution of a contract. A transaction between a hotelier and its resident client is an indivisible contract of multiple service and does not involve any sale of food inasmuch as it does not involve any lease of the room made available for the residence of the client. It is not open to the taxing authorities under the Punjab Act after its amendment by Act 18 of 1960 to split up the composite contract so as to make out an agreement of sale where in fact none

exists. The transaction as a whole has to be seen to find out if it is a sale or not. It partakes more of the nature of a service than a sale.—*ASSOCIATED HOTELS OF INDIA LTD. v. THE EXCISE AND TAXATION OFFICER, SIMLA, AND ANOTHER* [1966] 17 S.T.C. 555 (Punj.). On appeal this decision was affirmed. See below :—

—The petitioners, owning a chain of hotels, were registered as dealers under the Punjab General Sales Tax Act, 1948. One of the main lines of their business activity was to provide residential accommodation and their tariff for the persons staying in their hotels was an inclusive one for lodging as well as three principal meals, viz., breakfast, lunch and dinner. In addition to these, the hotels also provided numerous other amenities, such as public and private rooms with hot and cold running water and in the dining rooms crockery and cutlery as well as music and sometimes dancing. The Assessing Authorities had assessed the petitioners to sales tax under the Punjab General Sales Tax Act, 1948, up to September, 1958, treating the service of meals to the residents in the hotels as sale of foodstuffs and allowing from the overall charges received from the guests, 75 per cent. rebate on a notional basis on account of rent of premises and other amenities. The petitioners objected to the levy and ultimately filed a petition under Article 226 of the Constitution contending that there was no sale of foodstuffs and therefore they were not liable to sales tax. *NARULA, J.*, held that the supply of meals to the residents in the petitioners' hotels did not amount to sale of foodstuffs within the meaning of section 2(h) of the Act but that the supply of meals and other eatables to the casual and other non-resident visitors was sale of foodstuffs. On a Letters Patent Appeal by the State the only question for decision was whether the decision of *NARULA, J.*, on the first point was correct: *Held*, that the view of *NARULA, J.*, that no sale of food took place was correct. *Held further*, that there is no estoppel in tax cases and therefore the fact that the petitioners had been submitting returns and were being assessed to sales tax on a notional basis on the sale of foodstuffs did not matter. Decision of *NARULA, J.*, in *Associated Hotels of India Ltd. v. The Excise and Taxation Officer, Simla, and Another* [1966] (17 S.T.C. 555) affirmed.—*STATE OF PUNJAB AND ANOTHER v. ASSOCIATED HOTELS OF INDIA LTD.* [1967] 20 S.T.C. 1 (Punj. & Haryana).

Hotelier—Service charges realised from customers at certain percentage over and above tariff—Whether part of sale price.—The assessee ran at Juhu

Beach in Bombay a hotel which had both a boarding and a lodging establishment. The customers who came to the hotel were informed of the charges they had to pay for lodging with different amenities and boarding according to their taste. They were also informed that they had to pay service charges at ten per cent. of the tariff and sales tax at five paise per rupee. The assessee objected to the inclusion of the service charges in its gross turnover on the ground that they did not represent part of the sale price but were recovered from the customers for payment to the employees and for covering partly the breakages. The Tribunal found that the customers had no option but to pay the service charges which entirely depended on the food ordered and consumed by them: *Held*, that on the facts and in the circumstances of the case, the service charges constituted part of "sale price" as defined in section 2(29) of the Bombay Sales Tax Act, 1959, and could be included in the assessee's gross turnover. *The State of Orissa v. Utkal Distributors (P.) Ltd.* [1966] (17 S.T.C. 320), *The Tata Iron & Steel Co. Ltd. v. The State of Bihar* [1958] (9 S.T.C. 267), *Love v. Norman Wright (Builders) Ltd.* ([1944] 1 K.B. 484) and *George Oakes (Private) Ltd. v. The State of Madras and Others* [1961] (12 S.T.C. 476) referred to.—*SUN-N-SAND HOTEL PRIVATE LTD. v. THE STATE OF MAHARASHTRA* [1969] 23 S.T.C. 507 (Bom.).

Hotel business—Power of inspection—Power to watch continuously hotel and its business—Power to enter kitchen and other branches of hotel—"Reasonable time"—Meaning of.—*P. LAKSHMANA RAO & SONS v. SPECIAL COMMERCIAL TAX OFFICER (EVASIONS), VIJAYAWADA, AND OTHERS* [1962] 13 S.T.C. 860 (A.P.).

Hotel business—Continuous watch by special staff—Notice issued on basis of watch for reopening assessment—Legality—Best judgment assessment in reassessment proceedings—Power to make such assessment given by subsequent amendment of section—Whether provision procedural or affects vested rights.—The petitioner a firm running a hotel was assessed to sales tax in 1962 for the assessment year 1959-60 on a certain turnover. Subsequently, by reason of a watch placed on the petitioner's hotel premises for four days by a special staff the average sales per day was worked out. Based on this, the Commercial Tax Officer issued a notice on 12th September, 1963, under section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, seeking to reopen the assessment and proposing best judgment assessment on a certain turnover multiplying the average sales

per day by the number of working days in the year excluding holidays. The petitioner thereupon filed a writ petition in the High Court and contended (1) that the department was not entitled to keep a continuous watch over the premises and any estimate of the escaped turnover based upon such a watch was contrary to the provisions of the Act; (2) that section 14(4) as it stood before the amendment by Act 16 of 1963 did not enable the authorities to make a best judgment assessment in proceedings under section 14(4); (3) that section 14(4) as amended by Act 16 of 1963 being a provision affecting substantive rights had no retrospective effect so as to affect the assessments made before it was amended: *Held*, (1) that from the mere fact that the authorities were not entitled to keep a continuous watch over the premises, it did not follow that a notice issued under section 14(4) wherein the escaped turnover was sought to be assessed on the basis of such a watch was illegal; (2) that section 14(4) is not a provision merely affecting procedure, but a provision affecting substantive rights and therefore, the amended section cannot be given retrospective effect so as to affect assessments completed before the amendment; (3) that as there was no provision for best judgment assessment under section 14(4) before its amendment by Act 16 of 1963, the notice issued on the petitioner was illegal.—*UDIPI VASANTA VIHAR v. THE DEPUTY COMMERCIAL TAX OFFICER, GUNTUR-1* [1969] 23 S.T.C. 6 (A.P.).

Scope of proviso to section 5(1), Andhra Pradesh Act.—The higher incidence of tax in the proviso to section 5(1) of the Andhra Pradesh General Sales Tax Act, 1957, is meant for places like hotels, boarding-houses, restaurants, stalls and other places similar to those where articles of food and drink are sold for immediate consumption. Consequently wholesale dealers in biscuits and chocolates are liable to tax only at the general rate of 2 nP. per rupee and not at the higher rate of 3 nP. per rupee.—*THE STATE OF ANDHRA PRADESH v. T. T. KRISHNAMACHARI & CO.* [1962] 13 S.T.C. 10 (A.P.).

HYDERABAD GENERAL SALES TAX ACT

Hyderabad General Sales Tax Act (XIV of 1950)
—Essential goods—Act imposing sales tax on essential goods made after Constitution but before Central Act LII of 1952 came into force—Validity—Constitution of India, Article 286(3)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—*FIRM OF SOMA RAJALAH AND OTHERS v. SALES TAX OFFICER,*

SECUNDERABAD, AND ANOTHER [1954] 5 S.T.C. 187.

—Essential goods—Coarse and medium cotton cloth—Declaration as essential commodity by Essential Supplies (Temporary Powers) Act, 1946—Whether declaration for purposes of Article 286(3)—Imposition of sales tax on such cloth—Legality—Scope of Article 286(3), section 3 of Act LII of 1952 and Explanation 2 to section 2(k) of Hyderabad Act—Whether Article 286(3) affects laws passed by State Legislatures before enactment of Act LII of 1952—Hyderabad General Sales Tax Act (XIV of 1950), section 2(k), Explanation 2—Constitution of India, Article 286(3)—Essential Supplies (Temporary Powers) Act (XXIV of 1946)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—FIRM OF A. GOWRISHANKAR *v.* SALES TAX OFFICER, SECUNDERABAD, AND ANOTHER [1958] 9 S.T.C. 407 (S.C.).

—Assessment—Return—Limitation—Voluntary submission of return more than three years after close of accounting year—Whether assessment can be made on the basis of return—Whether Act provides limitation for final assessment—Applicability of rule 32 when return is rejected and best judgment assessment is made—“Rejection”, meaning of—Hyderabad General Sales Tax Rules, 1950, Rules 16, 32.—THE STATE OF ANDHRA PRADESH *v.* DONTALA RAJIAH [1960] 11 S.T.C. 819.

—Best judgment assessment—General principles stated—Failure to afford opportunity to assessee and to indicate material on which turnover is fixed—Whether assessment liable to be set aside—Hyderabad General Sales Tax Rules, 1950, Rules 13, 14 and 16.—DEWAN HANUMAN MANMOHAN *v.* THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 473.

—Dealer—Estoppel—Liability to tax—Whether officer can release dealer from payment of tax—Opinion expressed that dealer is not liable—Whether operates as estoppel.—VENKATESWARA OIL MILLS *v.* THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 555.

—Inter-State sales—Sales outside State—Coal supplied to consumers outside taxing State pursuant to directions of Coal Commissioner under Colliery Control Order, 1945—Sales whether inter-State—Whether outside the State—Hyderabad General Sales Tax Act, 1950—Constitution of India, Article 286(1)(a), Explanation.—SINGARENI COLLIERIES CO. LTD. *v.* COMMISSIONER OF

COMMERCIAL TAXES AND OTHERS [1966] 17 S.T.C. 197 (S.C.).

—Sale—Contract for supply of Gulmohva flower to distilleries from Government lands—Whether a contract of sale or contract of work and labour.—THE STATE OF ANDHRA PRADESH *v.* KALVA SURYANARAYANA [1962] 13 S.T.C. 317.

—Secs. 2, 4, 5—Whether sale of groundnuts necessary for imposition of tax on purchase price—“Series of sales” in section 5, meaning of—Whether more than one sale necessary to attract tax liability—Hyderabad General Sales Tax Rules, 1950, Rule 5(2).—SATYANARAYANA OIL TRADING COMPANY *v.* SALES TAX OFFICER, GULBARGA [1956] 7 S.T.C. 548.

—Sec. 2(e)—Hides and skins—Business of tanning—Purchase of tanning bark for use in the process of tanning—Whether “dealer” in tanning bark—Liability to pay tax on purchases—Hyderabad General Sales Tax Rules, 1950, Rule 5(2).—ABDUL BAKSHI & BROTHERS, HYDERABAD *v.* THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 526. On appeal to Supreme Court, see below:—

—Sec. 2(e)—Dealer—Business—Meanings of—Business of tanning hides and skins and of selling tanned hides and skins—Purchase of tanning bark for consumption in tannery—Liability to pay tax on purchase turnover of tanning bark—Hyderabad General Sales Tax Rules, 1950, Rule 5(2).—THE STATE OF ANDHRA PRADESH *v.* H. ABDUL BAKSHI AND BROS. [1964] 15 S.T.C. 644 (S.C.).

—Sec. 2(e), (k), (m)—Sale—Members’ club—Levy of sales tax on supply of refreshments to members—Legality—“Sale”, “dealer”, meanings of.—THE SECUNDERABAD CLUB *v.* COMMISSIONER OF SALES TAX, HYDERABAD STATE (NOW ANDHRA PRADESH) [1957] 8 S.T.C. 850.

—Secs. 2(e), (g), (m), 4, 7—“Goods”, “dealer”—Meanings of—Steam, whether goods—Liability to sales tax—Sale of sugar, an exempted commodity, packed in gunny bags and supply of grain in gunny bags to grain shops for furnishing cheap grain to workers—Gunny bags—Whether liable to sales tax—Scope of rule 8(g)(ii), Hyderabad General Sales Tax Rules, 1950.—NIZAM SUGAR FACTORY LTD. *v.* COMMISSIONER OF SALES TAX, HYDERABAD [1957] 8 S.T.C. 61.

—Sec. 2(f), Sch. I—Exemption—*Idlies* and *Dosas*—Whether included in rice—Whether essential commodities within the meaning of Article 286(3)—Power of Legislature to levy tax on

them—Constitution of India, Article 286(3)—Essential Supplies (Temporary Powers) Act (XXIV of 1946), Sec. 2.—*M. A. GANAPATHY IYER AND ANOTHER v. HYDERABAD STATE* [1954] 5 S.T.C. 334.

—Sec. 2(f), Sch. I, item 35—Motor spirit—Imposition of sales tax under Hyderabad Sales of Motor Spirit Taxation Regulation, XXIV of 1358-F—Legality—Validity of Regulation—Power of Military Governor to enact Regulation—Nature of his power—Whether Regulation repealed by Essential Supplies Act, 1950, Essential Commodities Act, 1955, or Act XIV of 1950—Whether Regulation affects price control—Hyderabad Sales of Motor Spirit Taxation Regulation (XXIV of 1358-F)—Essential Supplies (Temporary Powers) (Amendment) Act, 1950—Essential Commodities Act, 1955—Constitution of India, Schedule VII, List I, entry 53; List II, entry 54.—*KALBARGA NAGAI AH AND OTHERS v. STATE OF ANDHRA PRADESH* [1959] 10 S.T.C. 378.

—Sec. 2(k), Expl. 2—Tax on inter-State sales—Sales falling under Explanation to Article 286(1)(a)—Sales Tax Laws Validation Act, 1956—Scope of Explanation 2 to section 2(k), Hyderabad Act—Whether it authorised levy of tax on sales where goods were delivered within State for purposes of consumption therein—Levy of tax on such sales—Legality—Sales Tax Laws Validation Act (VII of 1956), Sec. 2—Constitution of India, 1950, Article 286.—*THE STATE OF ANDHRA PRADESH v. THE DUNLOP RUBBER CO. (INDIA) LIMITED, BOMBAY, AND OTHERS* [1960] 11 S.T.C. 632.

—Secs. 2(1), (4), 5, 11(2), 18(3)—Collection of tax—Illegal collections—Liability to pay to Government—Purchase outside State—Sums representing tax withheld from moneys payable to non-resident principals—Purchase not taxable—Whether sums withheld payable to Government or refundable to principals—Whether sale of groundnuts necessary for imposition of tax on purchase price—“Series of sales” in section 5, meaning of—Whether more than one sale necessary to attract tax liability—Hyderabad General Sales Tax Rules, 1950, Rule 5(2).—*GANGABISHEN MOHANLAL v. SALES TAX OFFICER, XI CIRCLE, HYDERABAD* [1956] 7 S.T.C. 460.

—Secs. 2(1), 11(2), 18(3)—Collection of tax—Illegal collections—Liability to pay to Government—Purchase outside State not taxable—Sums representing tax withheld from moneys payable to non-resident principals—Whether payable to Government or refundable to principals—Scope of section 11(2).—*HIRANAND RAMSUKH v. SALES*

TAX OFFICER, III CIRCLE, HYDERABAD [1956] 7 S.T.C. 510.

—Secs. 2(1), 11(2)—Registered dealer—Collection of tax from purchasers—Conditional collection—Collection not authorised by statute—Liability to pay to Government or refund to customers—Scope of section 11(2).—*CEMENT MARKETING CO. v. A. V. R. KRISHNAMURTHY* [1956] 7 S.T.C. 762.

—Secs. 2(m), 11—Sale of groundnuts by agriculturists—Provision imposing tax on purchasers—Validity—Whether rule 5(2) *ultra vires*—Whether offends Article 14 of Constitution of India—Whether tax can be collected by dealers from agriculturists—Nature of sales tax—Application under Article 226 for writ of *certiorari*—Maintainability—Hyderabad General Sales Tax Rules, Rule 5(2).—*KONDURI BUCHI RAJALINGAM v. STATE OF HYDERABAD AND OTHERS* [1954] 5 S.T.C. 401. On appeal to Supreme Court, see below:—

—Secs. 2(m), 3, 4, 5, 11—Dealer—Groundnuts—Turnover—Purchase of groundnuts by dealer from agriculturists—Liability to tax—Scope of proviso to definition of “turnover”—Whether tax can be collected from agriculturists—Scope of section 11—Essential goods—Declaration of groundnuts as “essential commodity” by Essential Supplies (Temporary Powers) Act, 1946—Whether declaration for purposes of Article 286(3)—Imposition of sales tax on groundnuts—Legality—Nature of sales tax—Hyderabad General Sales Tax Rules, 1950, Rules 5(2), 10—Constitution of India, Article 286(3)—Essential Supplies (Temporary Powers) Act (XXIV of 1946).—*KONDURI BUCHI RAJALINGAM v. THE STATE OF HYDERABAD AND OTHERS* [1958] 9 S.T.C. 397 (S.C.).

—Sec. 2(m), proviso—Dealer—Turnover—Exemption—Sale of agricultural or horticultural produce—“Interest in land”, meaning of—Exclusive right to usufruct—Whether interest in land—Scope of the term “otherwise”.—*K. SATYANARAYANA & Co. v. SALES TAX OFFICER, WARANGAL, AND OTHERS* [1958] 9 S.T.C. 591.

—Sec. 2(m), Expl. 1(iv)—Printer—Works contract—Sale of goods—Provisions relating to works contract in the Act and the Rules—Whether *ultra vires* Legislature—Press supplying printed stationery to customers—Nature of transaction—Whether works contract or sale of goods—Applicability of section 2(m), Explanation 1(iv) of Hyderabad Act—Hyderabad General Sales Tax Rules, 1950, Rule 5(3)—Constitution of India, 1950, Schedule VII, List II, entry 54.—

SARASWATI PRINTING PRESS *v.* COMMISSIONER OF SALES TAX, EASTERN DIVISION, NAGPUR [1959] 10 S.T.C. 286.

—Secs. 3, 4, 26—Groundnut—Whether includes kernel—Cotton-seed oil—Whether an edible oil—Hyderabad General Sales Tax Rules, Rule 5(2).—KISHENLAL OIL MILLS, HYDERABAD *v.* COMMISSIONER OF SALES TAX, HYDERABAD [1955] 6 S.T.C. 650.

—Sec. 4(2), Sch. II, item 9—Dealer in silk cloth purchasing silk cloth from outside merchants—Whether first dealer in silk cloth—Liability to additional tax—Hyderabad General Sales Tax Rules, 1950, Rule 7.—D. R. SAMBIAH *v.* SALES OFFICER, VIII CIRCLE, SECUNDERABAD [1956] 7 S.T.C. 508.

—Sec. 4(2), Sch. II, item 12—Tobacco—*Chuttas*—Whether fall under item 12 of Schedule II, Hyderabad Act—Whether raw tobacco—Levy of additional sales tax.—Legality—Whether amounts to double taxation.—D. SATHIAH & Co. *v.* SALES TAX APPELLATE TRIBUNAL, HYDERABAD, AND OTHERS [1960] 11 S.T.C. 143.

—Sec. 6—"Gold or silver bullion"—Meaning of—Whether includes gold or silver mixed with copper or lead—Interpretation of statutes.—SRI AKHRAJ PARAKH *v.* THE STATE OF ANDHRA PRADESH [1960] 11 S.T.C. 483.

—Sec. 6, cl. (v)—Cotton cloth—Meaning of—Whether includes sarees and dhoties—Interpretation of statutes—Madras General Sales Tax Act (IX of 1939), Sec. 3(2-A), item 1.—THE GOVERNMENT OF ANDHRA PRADESH *v.* PACHIPULSU VENKATA SUBBA RAO VALLAMKONDA VENKATESWARLU AND OTHERS [1960] 11 S.T.C. 561.

—Sec. 9—Commission agent—Buying or selling on behalf of known principals for agreed commission—Whether principal or agent liable.—APPALLI ABDUL RAHIM & Co. *v.* DEPUTY COMMERCIAL TAX OFFICER, NINTH CIRCLE, ABID ROAD, HYDERABAD [1960] 11 S.T.C. 357.

—Secs. 11(2), 20(e)—Sales tax—Collections of tax from purchasers—Validity of provision making it obligatory for dealers to pay unlawful collections to Government—Sections 11(2) and 20(e), Hyderabad Act—Whether *ultra vires* State Legislature—Constitution of India, 1950, Sch. VII, List II, entries 26, 54.—R. ABDUL QUADER & Co. *v.* SALES TAX OFFICER, SECOND CIRCLE, HYDERABAD [1964] 15 S.T.C. 403 (S.C.).

—Sec. 11—See also section 2(1).

—Secs. 12, 24, Sch. I, item 29—Civil Court—Suit against Government—Suit for refund of tax

alleged to be illegally collected—Limitation—Time taken in unsuccessfully pursuing remedies under Article 226—Whether can be excluded—Agricultural implements manufactured from scrap iron—Whether exempt—Best judgment assessment—Interference by High Court—Indian Limitation Act (9 of 1908) Sec. 14.—RAJAB ALI PIRANI *v.* STATE OF ANDHRA PRADESH [1967] 19 S.T.C. 312.

—Sec. 13(2)—Arrears of sales tax—Power of Collector to order distraint of movable property in custody of court—Extent of priority of payments regarding arrears of sales tax—Hyderabad Land Revenue Act (8 of 1317 F.), Secs. 104, 116, 119, 144.—THE COLLECTOR OF AURANGABAD AND ANOTHER *v.* THE CENTRAL BANK OF INDIA AND ANOTHER [1968] 21 S.T.C. 10 (S.C.).

—Sec. 15—Revision—Commissioner—Nature of jurisdiction under section 15, Hyderabad General Sales Tax Act, 1950—Power to assess escaped turnover—Whether can be exercised when acting under section 15.—RALLIS INDIA LIMITED *v.* THE STATE OF MYSORE [1965] 16 S.T.C. 130 (Mys.).

—Sec. 15(2)—Revision—Limitation—"At any time" in section 15, Hyderabad Act—Meaning of—Whether a period of limitation should be imported into that section—Hyderabad General Sales Tax Rules, 1950, Rules 30, 32.—SINGARENI COLLIERIES CO. LTD., HYDERABAD *v.* COMMISSIONER OF COMMERCIAL TAXES, HYDERABAD [1961] 12 S.T.C. 838 reversed in [1966] 17 S.T.C. 197 (S.C.).

—Sec. 18—Dealer—Agent of non-resident—Legality of assessment under section 18, Hyderabad Act—Composite assessment as dealer and also as agent of non-resident principal—Issue of separate notices—Whether necessary—Fresh opportunity to adduce evidence after recording adverse finding on evidence already adduced—Whether can be given—Sale completed within State by delivery of goods to agent of non-resident—Whether a sale in the course of inter-State trade—Hyderabad General Sales Tax Rules, 1950, Rule 14—Constitution of India, Article 286(2).—RAI SAHIB RAMDAYAL GHASIRAM & SONS *v.* THE GOVERNMENT OF ANDHRA PRADESH [1960] 11 S.T.C. 705.

—Sec. 18—Dealer—Agent of non-resident—Authority to buy on behalf of principal—Whether necessary—Purchaser within State acting also as financier—Legality of assessment under section 18, Hyderabad General Sales Tax Act (XIV of 1950).—SRINIVAS GOPIKISHEN

BADRUKA v. THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 393 (S.C.).

—Sec. 18(3)—See also Section 2(1).

—Sec. 20(3)—Change of law—Repeal and re-enactment of statutes—*Suo motu* revision—Return filed under repealed Act—Assessment made after new Act came into force—Limitation for revising assessment by Commissioner—Whether period prescribed under new Act or repealed Act.—**S. L. RAMANATHAM v. COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH** [1969] 23 S.T.C. 249.

—Sch. I—See Section 2(f).

—Sch. I, items 1 and 3—Exemption—“Bread”, meaning of—Whether includes all kinds of bread—“All forms of rice”, meaning of—Whether includes cooked rice.—**KAYANI AND CO. v. COMMISSIONER OF SALES TAX** [1953] 4 S.T.C. 387.

—Sch. I, item 17—Exemption—Burden of proof—Interpretation of fiscal statutes—Exemption of cloth costing certain sum per yard—Ready-made garments made out of such cloth—Whether exempt.—**SHARFAJI RAO v. COMMISSIONER OF SALES TAX** [1953] 4 S.T.C. 6.

—Sch. I, item 22—Handloom cloth—Meaning of—Whether includes handloom cotton lungies, roomals and sarees—Scope of exemption under item 22, Schedule I, Hyderabad General Sales Tax Act (XIV of 1950).—**RAI SAHEB CHEDRA DURVASULU v. SALES TAX OFFICER, SEVENTH CIRCLE, SECUNDERABAD, AND OTHERS** [1961] 12 S.T.C. 158.

—Sch. I, item 29—See Section 12.

—Sch. I, item 35—See Section 2(f).

—Sch. II, items 9, 12—See Section 4(2).

Hyderabad General Sales Tax Rules, 1950, Rule 5—Agricultural produce—Whether includes tobacco—Movement of goods across State border after completion of sale—Whether a sale in the course of inter-State trade—Constitution of India, 1950, Art. 286.—A. S. KRISHNA & CO. (PRIVATE) LIMITED, GUNTUR v. SALES TAX OFFICER, KHAMMAMETH, AND OTHERS [1961] 12 S.T.C. 640.

—Rule 5—Agricultural produce—Whether includes fruits—Validity of notification dated 15th April, 1953.—**SRI KRISHNA & CO. AND ANOTHER v. GOVERNMENT OF ANDHRA PRADESH** [1962] 13 S.T.C. 61.

—See also Section 3.

—Rule 5(2)—See Section 2.

—Rule 5(2)(f)—Horticulture—Meaning of—Cocoanuts—Whether horticultural produce.—**G.P.V.A. SUBRAHMANYAM v. THE STATE OF ANDHRA PRADESH** [1967] 20 S.T.C. 285.

—Rule 7—See Section 4(2).

—Rules 8(g)(ii), 10—See Section 2.

—Rule 14—Notice—Assessment—Turnover exceeding Rs. 30,000—Issue of notice by Assistant Sales Tax Officer—Assessment by Sales Tax Officer without issuing any notice—Validity.—**ABDUL KARIM v. THE SALES TAX OFFICER, MAHBOOBNAGAR** [1956] 7 S.T.C. 547.

—Rule 32—Revision—Questions given up or not raised before Tribunal—Whether can be raised before High Court—Firm—Notice to managing partner—Whether sufficient—Dissolution—No intimation of dissolution given to sales tax authorities—Notices served on partner in charge of affairs of firm—Other partner of dissolved firm—Whether can claim assessment to be void—Assessment—Return filed in time—Turnover whether escapes assessment—No limitation under Hyderabad Act for completion of assessment—Assessment whether can be completed after repeal of Act beyond the time fixed in Andhra Pradesh Act—Hyderabad General Sales Tax Act (14 of 1950)—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 14, 15-B, 22, 41.—**KISHANLAL OIL MILLS (by its partner Mohanlal) v. STATE OF ANDHRA PRADESH AND ANOTHER** [1969] 24 S.T.C. 304.

—Rule 34—Arrears of sales tax—Recovery from person alleged to be partner of assessee—Proper procedure—Necessity to serve notice.—**SHANKERLAL KARVA v. THE TAHSILDAR, KARIMNAGAR, AND OTHERS** [1958] 9 S.T.C. 246.

—Rule 35—Firm—Dissolution—No intimation to officer regarding dissolution—Assessment to tax after dissolution—Legality.—**BANKATLAL BADRUKA AND OTHERS v. THE STATE OF BOMBAY AND OTHERS** [1961] 12 S.T.C. 405 (Bom.).

IMPORT AND EXPORT

(See CONSTITUTION OF INDIA, HIDES AND SKINS and SINGLE POINT TAX).

IMPORTER

Importer of goods—Whether liable to tax if value of imported goods is less than Rs. 5,000 and turnover does not exceed Rs. 25,000.—Section 4(1) of the Central Provinces and Berar Sales Tax Act, 1947, provides: “Every dealer whose turnover during the year preceding the commencement of this Act

exceeded the taxable quantum shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act." Taxable quantum as defined in section 2(1) means: "(a) in relation to any dealer who himself manufactures or produces any goods for purposes of sale by himself, five thousand rupees; or (b) in relation to dealers not falling within clause (a), such sum or sums as may be prescribed." The limit in the case of an importer of goods and other dealers is prescribed by rule 18 of the Sales Tax Rules, which is as follows:—"The taxable quantum in relation to dealers not falling within sub-clause (a) of clause (1) of section 2 shall be Rs. 5,000 for importers of goods and Rs. 25,000 for other dealers." Rule 2(k) of the Rules defines "importer of goods" as meaning "a dealer who brings or causes to be brought into the Province any goods from outside the Province for the purpose of sale." Section 2(j) of the Act defines turnover as follows:—"Turnover" means the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period": *Held*, that the words "five thousand rupees" in section 2(1)(a) refer to the turnover of goods manufactured or produced by a dealer for purposes of sale by himself. The words do not refer to the sale price of goods not manufactured or produced by a dealer. Therefore a dealer who himself manufactures or produces any goods for sale is not liable if the sale price of goods manufactured or produced by him is less than Rs. 5,000; nor does he become liable if the turnover comprising the sale price of goods manufactured or produced by him and of other goods locally obtained exceeds Rs. 5,000 but does not exceed Rs. 25,000. The same interpretation applies to section 2(1)(b) of the Act read with rule 18 of the Sales Tax Rules. The words "five thousand rupees" in rule 18 refer to the turnover of imported goods and not to goods obtained locally. It is only when the sale price of goods imported exceeds Rs. 5,000 that an importer of goods becomes liable under section 4(1) of the Act to pay tax. There is no liability by an importer to pay tax if the sale price of imported goods is less than Rs. 5,000 and the turnover does not exceed Rs. 25,000. It is a well-established rule that the subject is not to be taxed without clear words for that purpose. The Central Provinces and Berar Sales Tax Act, 1947, is a fiscal enactment and has therefore to be construed strictly and any ambiguity or doubt arising out of its interpretation has to be resolved

in favour of the subject.—*AYODHYAPRASAD SUKLAL v. THE CROWN* [1951] 2 S.T.C. 44 (Nag.).

Importer of goods—Whether liable to tax if value of imported goods is less than Rs. 5,000 and total turnover does not exceed Rs. 12,000.—The word "turnover" in section 3(1) of the Madhya Bharat Sales Tax Act, 1950, with reference to a dealer who imports goods into Madhya Bharat, means turnover of imported taxable goods and unless the limit of Rs. 5,000 is reached in respect of such a turnover, he is not liable to tax at all. Consequently in order to bring the business of selling cycle parts imported from outside the State within the limits of taxability, the turnover in respect of that business must exceed Rs. 5,000. It is not enough that the turnover in respect of imported cycle parts and other business of the dealer, *viz.*, pan shop, exceeds Rs. 5,000.—*MAHABIR PRASAD v. B. S. GUPTA, SALES TAX OFFICER, INDORE, AND ANOTHER* [1957] 8 S.T.C. 429 (M.P.).

Liability to tax at the point of sale by importer—Scope of definition of "importer" in rule 2(d-1), U.P. Sales Tax Rules, 1948.—The assessee, a dealer in sugar in Uttar Pradesh, had been authorised to sell sugar by the Regional Director of Food, Government of India. The officer sent sugar from Bombay, obtained the railway receipt in his name and sent it to a bank in Lucknow. The bank received the price from the assessee and delivered the railway receipt to it after making the necessary endorsements. The assessee took delivery of the sugar in Lucknow and later on sold it in the course of its business. On the question whether the assessee was an importer within the meaning of rule 2(d-1) of the U.P. Sales Tax Rules, 1948: *Held*, that the assessee was an importer of sugar under clause (c) or (b) of rule 2(d-1). The power of the State Government to make rules carries with it the power to define or give an artificial meaning to words used in the rules. Consequently defining the word "importer" for the purposes of the rules was within the power conferred by section 24 of the U.P. Sales Tax Act, 1948, and rule 2(d-1) could not be said to be *ultra vires* the State Government.—*BHIKA MAL MUSADDI LAL v. COMMISSIONER OF SALES TAX, U.P.* [1963] 14 S.T.C. 770 (All.).

Import of glass bangles and sale after painting liquid gold on them—Liability as importer and as manufacturer—Manufacturer—Meaning of—Scope of notification—When officer can issue notice under section 21—Reason to believe—Meaning of—Irregularity in issuing notice—Whether renders it invalid.—By Notification No. St-1365/X-990-1956 dated

1st April, 1960, the State Government specified that the turnover of glass bangles was to be liable to tax at a single point; where the glass bangles were imported from a manufacturer outside U.P., the point of tax would be the sale by the importer, and where the glass bangles were manufactured within U.P., the point of tax would be the sale by the manufacturer. The petitioner-firm, dealing in glass bangles, sold some of the bangles purchased by it from the manufacturers in the same condition, and sold the others after painting them with liquid gold. The petitioner was assessed to sales tax under the Central Sales Tax Act, 1956, for the assessment year 1960-61. In the year 1965, the petitioner was served with a notice stating that a part of the turnover for that assessment year had escaped assessment and it was asked to furnish a return of its entire turnover and to produce its account books. The petitioner furnished certain information and subsequently filed a petition for *certiorari* for quashing the notice and raised the following contentions: (1) The notice was invalid because *ex facie* it appeared to be a notice under the U.P. Sales Tax Act, 1948, and, therefore, could not serve as a notice for initiating reassessment proceedings by virtue of the Central Sales Tax Act; (2) The petitioner was not liable to assessment of Central sales tax because of section 8; (3) The levy could not be justified by reference to section 9 of the Central Sales Tax Act; (4) The glass bangles sold by the petitioner were the very same articles purchased by it from the manufacturer and no part of the glass bangles sold could be said to have been manufactured by the petitioner: *Held*, (1) that an article belonging to any of the classes of goods enumerated in the notification may by a subsequent process be manufactured into another article, the latter article, however, still belonging to the same class as the original article. If the first article has been imported from outside Uttar Pradesh, its sale will attract sales tax at the point of sale by the importer. If the second article has been manufactured from the first article in Uttar Pradesh, its sale will attract sales tax at the point of sale by the manufacturer; (2) that whether an article is converted by manufacture into a different article depends upon several criteria, and one of the essential tests is whether in a commercial sense the original article has ceased to exist and a new article has taken its place. The question whether an article has been converted into a commercially different article is a question essentially of fact and one which appropriately falls for consideration before the Sales Tax Officer. Evidence should therefore be led in before that officer for the purpose of showing that

the article sold by the petitioner was not commercially different from the article purchased by it; (3) that so long as the Sales Tax Officer had reason to believe that the turnover or part of it had escaped assessment, he had jurisdiction to issue the notice. He must *bona fide* have reason for that belief, and there must be material upon which he came to that belief. He must act reasonably and without arbitrariness. The belief that the turnover or part of it had escaped assessment might turn out to be erroneous, and might be discovered to be so during the subsequent assessment proceedings, but if there was material before him which could reasonably lead him to that belief it could not be said that the notice was invalid; (4) that the contention that no sales tax could be imposed against the petitioner by reason of section 8(2A) and section 9 of the Central Sales Tax Act, 1956, belonged to the domain of assessment proceedings pending before the Sales Tax Officer and could not be considered in a petition for *certiorari*; (5) that whether the notice issued under section 21 was invalid would depend on whether it succeeded in the purpose for which it was issued. The notice was intended to inform the assessee of the proposed action by the assessing authority and also to inform him clearly as to what was required of him. If the assessee had no difficulty in understanding the purpose of the notice its validity could not successfully be impugned; (6) that although the notice mentioned at the top that it was under section 21 of the U.P. Sales Tax Act, 1948, in the circumstances of the case, it was not invalid.—PAWANSUT BANGLE STORES, FIROZABAD v. ASSISTANT SALES TAX OFFICER, FIROZABAD, AND ANOTHER [1966] 18 S.T.C. 87 (All.).

First sale of goods imported into the State of Madras—Meaning of.—The word "import" in the proviso to section 3(2) of the Madras General Sales Tax Act, 1939, in the case of despatch of goods by rail should not be interpreted by referring to Explanation 1 to section 3(b) of the Central Sales Tax Act, 1956. The word "import" means to bring in or to bring from abroad and such bringing is effectuated once the goods arrive. It is not necessary to search and find out some more events in the chain of causation to fix the ultimate terminal of the movement of goods by rail. The concept adopted in this behalf by Explanation 1 to section 3(b) of the Central Act is peculiar to itself and not of general application. It cannot therefore be said that under the proviso to section 3(2) of the Madras Act the movement of goods by rail will be deemed to have terminated only when the goods are taken delivery of.—

JAIN JARI STORES, MADRAS *v.* THE STATE OF MADRAS AND ANOTHER [1969] 24 S.T.C. 67 (Mad.).

INCOME-TAX

Amount set apart for payment of sales tax—Whether deductible in computing income for income-tax purposes—Mercantile system of accounting—Amendment to Sales Tax Act—Validity of Amendment Acts challenged—Liability to sales tax, whether contingent or unascertained.—The assessee, a dealer in cloth and maintaining mercantile system of accounting, debited in its profit and loss account on 28th August, 1957, the last day of the previous year, a sum of Rs. 27,167 being the estimated sales tax liability under the U. P. Sales Tax (Amendment) Ordinance (9 of 1956) issued on 31st March, 1956, and which was replaced by the U. P. Sales Tax (Amendment) Act, 1956. The validity of the Ordinance was challenged and it was declared to be *ultra vires* by the High Court in *Adarsh Bhandar v. Sales Tax Officer* [1957] (8 S.T.C. 666). Subsequently the U. P. Sales Tax (Amendment) Act, 1957, was passed on 3rd September, 1957, with the idea of validating the amendments made by the Ordinance; but this was also declared to be *ultra vires* by the High Court in *Firm Bangali Mal Satish Chandra Jain v. Sales Tax Officer, Agra* [1958] (9 S.T.C. 492). After this, the Act was further amended on 6th May, 1958, by the U. P. Sales Tax (Validation) Act (15 of 1958). Against this also, writ petitions were filed but the High Court in *Ram Chand Textiles v. Sales Tax Officer, Hathras* [1964] (15 S.T.C. 340) overruled the decision in *Firm Bangali Mal Satish Chandra's* case [1958] (9 S.T.C. 492). In the meantime the Supreme Court held in *J. K. Jute Mills v. State of U. P.* [1961] (12 S.T.C. 429) that the U. P. Sales Tax (Validation) Act, 1958, was valid and *intra vires*. In computing the assessee's income for income-tax purposes, for the year 1956-57, the officer held that the sum of Rs. 27,167 was not an ascertained liability at the time the debit was made, because the validity of the levy of sales tax was challenged and the matter was before the Supreme Court. On a reference: *Held*, that the amount was deductible as an ascertained liability. *Per* MANCHANDA, J.—The liability to sales tax was a statutory liability which had been incurred and under the mercantile system of accounting the assessee was obliged to debit the expenditure in his accounts. If the estimate of liability was wrong, the department could have substituted its own estimate, but that would not convert the statutory liability into an unascertained liability, particularly as it was admitted that the assessee's

accounts were properly maintained. *Per* BEG, J.—A provision of law imposing a statutory liability has to be assumed to be valid and an assessee is entitled to act on such an assumption. The manner in which an assessee acts must be considered by the income-tax authorities in determining whether a liability has to be treated as ascertained or contingent. In the instant case, the assessee treated the liability as ascertained and fixed by statute automatically. He was therefore entitled to the deduction.—DEVI DAS MADHO PRASAD *v.* COMMISSIONER OF INCOME-TAX, U. P. [1967] 20 S.T.C. 53 (All.).

Refund by Government of sales tax received by seller—Whether assessable as "income" of seller—Nature of sales tax.—The assessee received a refund of sales tax amounting to Rs. 41,124 as a result of an order of the Bombay Sales Tax Authorities consequent on a decision of the Supreme Court. The Income-tax Authorities sought to assess this refunded amount as income of the assessee. It was contended on behalf of the assessee that sales tax was collected by the assessee from the assessee's buyers and the same was under the statute to be paid to the Sales Tax Authorities and when the money representing the sales tax was refunded by the Sales Tax Authorities the identical money became refundable by the assessee to the assessee's buyers, and, therefore, the refunded amount was not assessable as his income: *Held*, that the amount of sales tax, even though shown separately in the transaction of sale as sales tax, is a part of the consideration which the seller charges for transfer of the property. The fact that the statute provides that the seller may collect sales tax did not rob the transaction of its trading character. Consequently, the sum in question was assessable to income-tax as income of the assessee.—*Commissioner of Income-tax v. Punjab Distilling Industries Ltd.* [1964] (53 I.T.R. 75) relied on.—IKRAHNANDI COAL CO. *v.* COMMISSIONER OF INCOME-TAX, CALCUTTA [1968] 22 S.T.C. 229 (Cal.).

Sales tax received by auctioneer from purchasers—Whether assessable as "income" of auctioneer—Liability to pay to the State or return to purchasers—Effect.—The assessee, who carried on the business of auctioneer, collected from the purchasers in auction in addition to the price of the goods, the sales tax payable to the State under the Bengal Finance (Sales Tax) Act, 1941. The amount collected as sales tax was shown separately in the memo. granted to the purchasers and was also credited to a separate account in the books, pending a decision of a Division Bench of the High Court as to whether an auctioneer was

a dealer and was liable to collect and pay sales tax over to the State. The department contended that the receipts by way of sales tax were receipts bearing the same character as receipts from the assessee's trade itself and that such receipts did not change their character by being credited to a separate account other than the trading account. The Tribunal held that, as the amount of sales tax was collected by the assessee, not as its profits or gains, but merely for the purpose of making it over to the State in due time, it was a liability. It did not belong to the assessee either in the shape of a trading receipt or in the shape of gain. The character of the receipt being that of a tax, it would not change such character merely because it had remained with the assessee. The Tribunal further observed that if the High Court finally decided that the assessee was liable to pay the amount collected as sales tax to the State, the amount would have to be made over to the Government. If, on the other hand, the High Court held that the assessee was not liable for any sales tax, the amount would have to be refunded to the purchasers. On a reference: *Held*, that the amounts collected as sales tax were an integral part of the commercial transaction of sales by auction carried on by the assessee and when they were received, they were the moneys of the assessee and remained thereafter the moneys of the assessee as its trading receipts and the Income-tax Officer was justified in bringing the amounts to tax. The liability to return the money was not the criterion for determining the question whether the amount received was a trading receipt or not. What was important was, whether these amounts were relatable to the trading activities. If, ultimately, the assessee was found liable to pay sales tax to the State Government, the amounts so paid would be allowed as deduction in the year of payment. Similarly, if the assessee had to refund any moneys to the purchasers at the auctions, then such refunds would also be allowed as deduction in the year in which they were made.—COMMISSIONER OF INCOME-TAX, WEST BENGAL I v. CHOWRINGHEE SALES BUREAU PRIVATE LTD. [1968] 22 S.T.C. 527 (Cal.).

Reassessment—Section 34, Income-tax Act compared.—The existence of reason to believe on the part of the Sales Tax Officer that certain turnover has escaped assessment is a condition precedent for acquiring jurisdiction under section 21 of the U. P. Sales Tax Act, 1948, and the belief of the officer is not purely subjective but has to be based upon relevant material, howsoever meagre. To this extent section 21 of the

U. P. Sales Tax Act, 1948, is *in pari materia* with section 34 of the Income-tax Act, 1922. Therefore it is not open to a Sales Tax Officer to initiate proceedings under section 21 of the U. P. Act with a view to launching a fishing and roving enquiry on the off-chance of finding some escapement of tax. He must have in his possession some material pointing towards the escapement of turnover before he can entertain a belief about the escapement and can assume jurisdiction under section 21.—DEOKI NANDAN v. M. L. GUPTA, SALES TAX OFFICER, ETAWAH [1969] 23 S.T.C. 481 (All.).

INSURANCE

(See DEDUCTIONS).

INTEREST

Interest—Illegal assessment—Successful suit for refund of tax—Whether assessee is entitled to claim interest on amount of tax collected from him.—In a suit filed by an assessee challenging the validity of an assessment of sales tax made on him, the court made a declaration that the assessment was illegal. Thereafter the Government repaid him the amount of tax collected with interest from the date of judgment. On the question whether the assessee could claim interest from the date of collection till the date of judgment: *Held*, (1) that it could not be said that the tax that was collected created a debt or that it was a receipt of money had and received for the benefit of the taxpayer or that it was tort; (2) that under the provisions of the Madras General Sales Tax Act, 1939, in cases where the assessee was entitled to a refund of the tax by reason of an appeal or revision, he would not be entitled to claim interest; (3) that the statutory provisions governing the case did not permit the interest being awarded on the excess tax collected, and the interest could not also be awarded under the provisions of the Interest Act. An order of assessment of the taxing authorities is not an order of court and the conduct of the Sales Tax Department in collecting the tax is not a tort. The provisions of section 12-A(5) of the Madras General Sales Tax Act, 1939, as amended by the Madras General Sales Tax (Amendment) Act, 1951, that interest cannot be allowed on tax ordered to be refunded, is only declaratory in character, indicating the law existing even before.—STATE OF ANDHRA PRADESH v. MOTHEY GANGARAJU [1963] 14 S.T.C. 112 (A.P.).

Arrears of sales tax—Liability to pay interest—When arises.—It is only a defaulter who is liable

to pay interest under section 8(1-A) and a person cannot be said to be a defaulter unless a notice of demand for the payment of sales tax is first served upon him and he commits a default thereof.—**MASITULLAH KHAN AND OTHERS v. THE COLLECTOR, SHAHJAHANPUR, AND OTHERS** [1969] 23 S.T.C. 106 (All.).

—*Provision for payment of interest at 18 per cent. Validity—Whether ultra vires Legislature—Whether discriminatory and usurious.*—Inasmuch as the matter relating to interest is incidental to the recovery and collection of sales tax, the U.P. Legislature was competent to enact section 8(1-A) of the U.P. Sales Tax Act, 1948, relating to interest and it will be fully covered by entry 54 of List II in Schedule VII of the Constitution. The Civil Procedure Code (5 of 1908) and the U.P. Sales Tax Act, 1948, operate in two different fields. Whereas the Code regulates the procedure to be followed in a civil court, the Act is a taxing statute. Consequently the circumstance that the Civil Procedure Code provides for interest only at the rate of 6 per cent. and section 8 of the Act provides for interest at the rate of 18 per cent. cannot lead to the conclusion that the latter provision is discriminatory. Considering the market rate of interest paid and realised by businessmen 18 per cent. per annum provided by section 8(1-A) cannot be said to be usurious.—**P. C. BHANDARI & Co. (P.) LTD. v. COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW, AND OTHERS** [1969] 23 S.T.C. 324 (All.).

—*Interest—Collection of interest on arrears of sales tax—Validity—Whether ultra vires Legislature—Recovery proceedings—Amount payable enhanced on account of interest—Whether fresh notice of demand necessary—Liability for interest on arrears of tax under Central Act.*—The power to charge interest on arrears of sales tax is a power incidental to the power to impose sales tax. Although there is an apparent conflict between section 3-A(2) and section 8(1-A) of the U.P. Sales Tax Act, 1948, as they form parts of the same statute courts must make a reasonable endeavour to reconcile the two provisions. The provision of section 3-A(2) must be understood as subject to the special provision of section 8(1-A). The apparent conflict in the two provisions is not sufficient for striking down the provision of section 8(1-A). Therefore section 8(1-A) making provision for interest on arrears of sales tax is valid. Where the liability of an assessee has been enhanced as a result of the operation of section 8(1-A) a fresh notice of demand is necessary before he can be treated as a defaulter and initiate recovery proceedings against him.

The machinery contemplated by section 9(3) of the Central Sales Tax Act, 1956, has to be confined to the tax and penalty payable under the Central Act. Interest charged under section 8(1-A) assumes the character of supplementary tax and imposition of such a supplementary tax has not been authorised by section 9(3) of the Central Act. Therefore an assessee cannot be made liable to pay under the Central Act interest on the arrears of sales tax by virtue of section 8(1-A) of the U.P. Act.—**BENI RAM MOOL CHAND v. THE SALES TAX OFFICER, FATEHGARH, AND OTHERS** [1969] 23 S.T.C. 423 (All.).

INTER-STATE SALES

(See CENTRAL SALES TAX ACT and CONSTITUTION OF INDIA).

IRON AND STEEL

Iron and steel—Purchase of iron and steel for purpose of rolling them into rolled steel sections—Levy of purchase tax—Legality—Levy of (1) sales tax on sale of steel to ordinary consumer, (2) purchase tax on sale of steel to manufacturer, and (3) sales tax on sale of rolled steel sections—Whether contrary to provisions of section 15, Central Sales Tax Act—**East Punjab General Sales Tax Act (46 of 1948), Sec. 2(ff).**—**DEVGUN IRON AND STEEL ROLLING MILLS, GOBINDGARH v. THE STATE OF PUNJAB AND OTHERS** [1961] 12 S.T.C. 590 (Punj.). The appeal preferred against this decision is reported as **DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS** [1967] 20 S.T.C. 430 (S.C.). See pages 237, 239 *supra*.

—Scrap iron sold after conversion into bars, flats and plates—Exemption, whether available.—**THE STATE OF MADHYA BHARAT v. HIRALAL** [1966] 17 S.T.C. 133 (S.C.) (page 554 *supra*).

—Shelving rack and binstak sold by company manufacturing iron and steel products—Whether iron and steel furniture—Rate of tax—**Bombay Sales Tax Act (51 of 1959), Schedule C, entries 40A & 44H.**—**CHANDAN METAL PRODUCTS PVT. LTD. v. THE STATE OF GUJARAT** [1969] 23 S.T.C. 29 (Guj.) (page 583 *supra*).

—*Corrugated iron sheets—Whether a form of iron or an article of iron—Whether covered by entry 15 or 80, Schedule B, Bombay Sales Tax Act (3 of 1953 prior to its amendment by Act 16 of 1957).*—**BHAGWATI, C.J.** (agreeing with **MEHTA, J.**; **DIVAN, J.**, contra)—Sale of corrugated iron sheets is covered by entry 15 of Schedule B to the

Bombay Sales Tax Act, 1953, prior to its amendment by Bombay Act 16 of 1957, and not by the residuary entry 80 of that Schedule. BHAGWATI, C.J.—Corrugated iron sheets are merely “iron” in another shape and form and they cannot be regarded as articles or products manufactured or fabricated out of iron. Merely because iron is given the shape of sheet and is subjected to corrugation for the purpose of giving it rigidity and increased stiffness so as to make it acceptable to a particular class of persons who might want to use it in the form of iron sheet for roofing and walling, it does not cease to be iron; it merely assumes another form, namely, that of a wrinkled sheet but it still continues to retain the essential character of iron. DIVAN, J.—The real test applicable to such cases is the test of possibility of substitution of the one for the other so far as consumers are concerned and if there is no such possibility, it would be a new commodity and would no longer be a form of the original article. Corrugated iron sheet is not a form of iron or steel but is an article of iron or steel and is a distinct commodity. The sale of corrugated iron sheets is covered by entry 80 of Schedule B to the Act. MEHTA, J.—“Iron” does not lose its essential character when it is put merely in the form of corrugated iron sheets, as it is merely an alteration of form or shape to make it more acceptable to the customer. It may be capable of independent use but that does not change it into a totally different manufactured product or a new fabricated article in which it can be said that iron or steel has lost its essential character.—STATE OF GUJARAT *v.* SHAH VELJIBHAI MOTICHAND, LUNAWADA [1969] 23 S.T.C. 288 (Guj.).

Scrap iron—Article found to be iron scrap—Whether machinery falling under item 23, First Schedule—Madras General Sales Tax Act (1 of 1959), First Schedule, item 23; Second Schedule, item 4.—When an article has been found to be iron scrap it will fall under item 4 of the Second Schedule of the Madras General Sales Tax Act, 1959. It will not be machinery or a part of it, or hardware or iron and steel falling within item 23 of the First Schedule to the Act.—DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI *v.* R. Y. NADAR AND CO. [1966] 17 S.T.C. 312 (Mad.).

—Scrap iron—Agricultural implements manufactured from scrap iron—Whether exempt.—RAJAB ALI PIRANI *v.* STATE OF ANDHRA PRADESH [1967] 19 S.T.C. 312 (A.P.).

JAGGERY

Jaggery—Whether agricultural produce and exempt from sales tax.—See page 25 *supra*.

Jaggery—Withdrawal of exemption granted to jaggery and gur by amending Schedule and simultaneous issue of notification granting exemption to palm jaggery—Validity—Whether discriminatory.—The exemption granted to jaggery and gur under the Madras General Sales Tax Act, 1959, was withdrawn from 1st January, 1968, when item 5 of the Third Schedule to the Act was amended by the Government by issuing a notification under section 59(1) of the Act and this became law as Act 2 of 1968 when the Legislature approved the notification. On the same day, in exercise of their powers under section 17(1), the Government issued another notification granting exemption in respect of the tax payable on all sales of palm jaggery. The grant of such an executive exemption was challenged in the High Court by certain dealers in cane jaggery by a petition under Article 226 of the Constitution: *Held*, (1) that the policy of taxation is flexible and a provision empowering the executive to exempt particular goods from a duty is valid; (2) objectively viewing the provisions attacked, it could not be said that the Legislature or the executive arbitrarily acted to the prejudice of the traders in cane jaggery; (3) the imposition of tax on palm jaggery and cane jaggery under Act 2 of 1968 and the subsequent grant of exemption from such tax to palm jaggery alone under section 17 did not cumulatively or otherwise impose any unreasonable restriction on trade in cane jaggery; (4) the exemption granted to sales of palm jaggery was competent and even if it were to be viewed as restrictive of trade in relation to cane jaggery, such a restriction was reasonable, rational and necessary in the public interest; (5) cane jaggery and palm jaggery being two different commodities, the State Government was not unjustified in differentiating them for tax purposes, and therefore no question of discrimination arose.—K. SUBRAMANIA PILLAI AND OTHERS *v.* STATE OF MADRAS [1969] 23 S.T.C. 359 (Mad.). On appeal to Supreme Court see below:

—Transactions of sale of palm jaggery were exempt from sales tax under the Madras General Sales Tax Act, 1939, from February 28, 1955, and wholly from April 1, 1956, and transactions of sale of cane jaggery were exempt from tax from April 1, 1958. Between April 1, 1958, and December 31, 1967, transactions of sale of cane jaggery and palm jaggery were exempt from

liability to sales tax under the Madras General Sales Tax Acts of 1939 and 1959. As a result of notifications issued by the State Government, one under section 59(1) of the Madras General Sales Tax Act, 1959, and the other under section 17(1) of that Act, transactions of sale of cane jaggery became liable to sales tax and sale of palm jaggery remained exempt from liability to pay sales tax with effect from January 1, 1968. The notification under section 59(1) received legislative sanction by Madras Act No. 2 of 1968: *Held*, that cane jaggery and palm jaggery were not commodities of the same class; the methods of their production were different; they reached the consumers through different channels of distribution; the price at which they were sold differed; and they were consumed by different sections of the community. In imposing liability to tax on transactions of sale of cane jaggery and in exempting sales of palm jaggery, no unlawful discrimination denying the guarantee of equal protection of the laws was practised; *Held also*, (i) that the tax imposed on transactions of sale of cane jaggery did not affect the freedom of trade within the meaning of Article 301 of the Constitution; (ii) that the Madras General Sales Tax Act, 1959, which imposed tax on cane jaggery and the notification which exempted palm jaggery from liability to tax did not impose a colourable exercise of authority. If the Legislature had the power to impose the tax, its authority was not open to challenge on a plea of colourable exercise of powers.—*T. G. VENKATARAMAN v. STATE OF MADRAS AND ANOTHER* [1969] 24 S.T.C. Short Notes 1.

JAMMU AND KASHMIR

Sales to dealers in Jammu and Kashmir when Central Sales Tax Act, 1956, was not extended to the State.—Although the Central Sales Tax Act, 1956, was not extended to the State of Jammu and Kashmir till 13th March, 1958, sales which occasioned the movement of goods from the Madras State to the State of Jammu and Kashmir were inter-State sales.—*S. MARIAPPA NADAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 371 (Mad.).

Sales by dealers in Punjab State to dealers in State of Jammu and Kashmir prior to extension of Central Act to that State—Liability to sales tax.—Under the Central Sales Tax Act, 1956, prior to its amendment by Act 5 of 1958 whereby the words “except the State of Jammu and Kashmir” were omitted from section 1(2), sales tax could be imposed on a transaction of sale or purchase which took place in Amritsar but

occasioned the movement of the goods from the Punjab State to the State of Jammu and Kashmir.—*NAND LAL HIRA LAL v. THE PUNJAB STATE* [1965] 16 S.T.C. 967 (Pun.).

Sales by dealers in State of Uttar Pradesh to dealers in State of Jammu and Kashmir prior to extension of Central Sales Tax Act, 1956, to State of Jammu and Kashmir—Liability to sales tax.—Although the Central Sales Tax Act, 1956, was not applicable to the State of Jammu and Kashmir during the period 1st July, 1957, to 31st March, 1958, as that State was one of the States referred to in the Constitution, so far as section 3 of the Central Sales Tax Act, 1956, was concerned, if a sale occasioned the movement of goods from any State to the State of Jammu and Kashmir, it would be a sale in the course of inter-State trade and commerce. Therefore sales effected by an assessee in the State of Uttar Pradesh to the dealers in the State of Jammu and Kashmir during the period 1st July, 1957, to 31st March, 1958, were liable to be taxed under the Central Sales Tax Act, 1956.—*R. B. NARAIN SINGH SUGAR MILLS LTD. v. THE COMMISSIONER OF SALES TAX, U.P.* [1969] 23 S.T.C. 314 (All.).

JEWELLERY

Dealer in silver—Finished article given to purchaser in exchange for silver and making charges—Whether sale.—*JAYARAMA CHETTIAR, In re* [1948] 1 S.T.C. 168 (Mad.).

Dealer in gold and silver—Supply of silver to manufacturers and getting finished articles—Whether sale.—*P. A. RAJU CHETTIAR AND BROTHERS v. THE STATE OF MADRAS* [1955] 6 S.T.C. 131 (Mad.).

Dealer in bullion and ornaments—Giving of bullion and making charges to goldsmith in exchange of ready-made ornaments—Whether sale.—*SALES TAX COMMISSIONER, U.P. v. RAM KUMAR AGARWAL* [1967] 19 S.T.C. 400 (All.).

—Where the assessee supplied gold jewels and in consideration thereof received equal weight of gold and labour charges for making the jewels, the transaction amounted to sale of goods.—*Jayarama Chettiar, In re* [1948] 1 S.T.C. 168 (Mad.) approved.—*V. P. VADIVEL ACHARI v. MADRAS SALES TAX APPELLATE TRIBUNAL (SECOND ADDITIONAL BENCH), MADRAS* [1969] 23 S.T.C. 273 (Mad.).

Gold ornaments set with imitation stones of small value—Whether jewellery.—The value of the imitation stones set in a gold ornament is wholly immaterial in deciding the question whether the

ornament is jewellery or not. Therefore a gold ornament containing imitation stones of small value is "jewellery" within the meaning of that expression as used in item 24 of Government of Orissa Notification of the Finance Department No. 5028 dated 28th July, 1947, as amended by Notification No. 8728-F, dated 1st July, 1949.—*THE STATE OF ORISSA v. JAMULA SRIRANGAM* [1961] 12 S.T.C. 135 (Orissa.).

Manufacturer of gold ornaments—Maintaining stock of gold and advancing gold for manufacturing ornaments and charging merchants for labour only—Merchants supplying gold either before or after manufacture—Manufacturer whether dealer.—See *COLLECTOR OF SALES TAX v. KANTHAD-BHAI AND POPATLAL* [1959] 10 S.T.C. 516 (Bom.).

Manufacturer of gold ornaments—Exemption—Merchants making gold ornaments by independent artisans—Whether manufacturer.—In a statute dealing with sales tax, the word "manufacture" must mean "to bring into existence something in a form in which it is capable of being sold or supplied in the course of business". Manufacture for the purpose of one's own consumption is not contemplated in sales tax law. The term "manufacturer" must, therefore, mean necessarily one who brings into being from raw materials finished goods which are capable of being sold in the course of business. An exemption clause in a taxing statute must be construed strictly, but it should not be so construed as to make the exemption practically illusory. Item 33 of Notification No. 8728 C.T. 66/49F dated 1st July, 1949, issued by the Government of Orissa under section 6 of the Orissa Sales Tax Act, 1947, exempted gold ornaments when they are sold by the manufacturer who charged separately for the value of gold and the cost of manufacture. The petitioners who carried on the business of selling gold and silver ornaments claimed exemption from sales tax under the notification in respect of the sales of some gold ornaments. It was found by the Sales Tax Authorities that the petitioners did not have a factory for the manufacture of the ornaments but supplied gold to some independent artisans who made it into ornaments with the help of their own tools. While in some instances the artisans worked in their own houses, in others they worked in the shops of the petitioners where they were given electrical facilities and seating arrangements. The petitioners paid labour charges to the artisans for converting gold into ornaments and they sold the ornaments to consumers showing, in their bills, the value of gold and the cost of manufacture separately. In some instances gold was supplied

to the petitioners by the consumers themselves and the petitioners after getting it made into ornaments with the help of the artisans, charged the consumers for the cost of manufacture plus some margin of profit for themselves. The Sales Tax Officer refused to grant the exemption to the petitioners on the ground that they were not "manufacturers" but were merely order-suppliers: *Held*, (1) that the expression "manufacturer" occurring in the exemption clause meant the first owner of the finished product for whom it was made, either by his paid employees or even by independent artisans on receipt of raw materials and labour charges from him; (2) that the petitioners were therefore entitled to the exemption from sales tax because while selling the finished goods to the consumers they charged separately for the value of the gold and for the cost of manufacture.—*J. SRIRANGAM BROTHERS AND OTHERS v. SALES TAX OFFICER, GANJAM CIRCLE, BERHAMPUR* [1959] 10 S.T.C. 257 (Orissa).

Manufacture of ornaments on orders of customers after purchasing gold from gold dealers.—Nature of transaction.—The question whether a goldsmith is liable to pay sales tax on the sale of ornaments made on the orders of customers after purchasing gold from gold dealers will depend upon the intention which the parties to the sale have with reference to the gold contained in the ornaments. In other words, it has to be seen whether it was the intention of the customer to have the ornaments prepared by the goldsmith and to pay him only wages for his labour or whether he intended to pay for the finished product. Where the goldsmith manufactures ornaments out of gold purchased by him from the gold dealers, the intention is to sell the finished product and the gold contained in the ornaments is also sold along with the ornaments. In such cases the goldsmith is liable to pay sales tax on the value of the ornaments. It does not matter that the goldsmith does not make any profit on the gold used in the ornaments. In the case of a manufacturer, who sells goods prepared out of raw materials purchased by him from the market, it cannot be said that he is not liable for the price of the raw materials as he never intended to make any profit on them as such. The transaction has to be considered as a whole and the factors which entered into bringing the finished product into existence cannot be separated. The petitioner, a goldsmith, either sold ready-made ornaments or made ornaments on the orders of customers after purchasing gold from gold

dealers. The petitioner filed no accounts and therefore the Sales Tax Officer assessed him on the value of the gold purchased by him from the gold dealers. The Assistant Commissioner however determined the value of the ornaments by adding 10 per cent. of the value of the gold and enhanced the assessment: *Held*, that, in the circumstances of the case, the assessment of sales tax on the estimated value of the ornaments based on the purchases of gold was correct.—*DAURAM v. STATE OF MADHYA PRADESH AND OTHERS* [1962] 13 S.T.C. 562 (M.P.).

Manufacturer of gold ornaments—Exemption—Validity of Act making clear intention in granting exemption—Whether Act discriminatory—Whether infringes Article 14 or 19(1)(g), Constitution of India.—*EPARI CHINNA KRISHNA MOORTHY AND ANOTHER v. THE STATE OF ORISSA AND OTHERS* [1964] 15 S.T.C. 461 (S.C.).

—*Exemption—Gold ornaments—Manufacture, manufactory—Meanings of—Making of gold ornaments by artisans engaged by dealer in his workshop—Whether artisans formed a manufactory—Orissa Sales Tax Validation Act (7 of 1961).*—A manufactory is a place where a manufacture is carried on and the process by which gold is converted from its natural state to the article of commerce known as ornament is a manufacture. Where the petitioner carrying on the business of selling gold ornaments engaged ten artisans for making gold ornaments out of gold supplied by the petitioner and these artisans made the ornaments under the direct supervision and control of the petitioner at the petitioner's workshop: *Held*, that the artisans formed a manufactory owned or run by the petitioner for the purpose of business with respect to the articles manufactured therein within the meaning of section 2 of the Orissa Sales Tax Validation Act, 1961.—*JAMMULA SRIRANGAM BROS. v. SALES TAX OFFICER, GANJAM, CIRCLE I* [1960] 17 S.T.C. 69 (Orissa).

Ornaments—Removal of alloy from gold ornaments—Whether involves process of manufacture—“Manufacture”—Meaning of.—*PURAN CHAND GOPAL CHAND BAZAR SARAF v. THE STATE OF PUNJAB AND OTHERS* [1963] 14 S.T.C. 252 (Punj.).

Sale of jewellery containing precious stones—Whether rate for precious stones can be charged.—Under section 5(3) of the Mysore Sales Tax Act, 1957, tax is payable at the rate specified in the third column of the Second Schedule only in a case where there is a sale of any of the goods mentioned in the second column of that

Schedule. Under item 64 of the Second Schedule it is only when there is a sale of “precious stones, namely, diamonds, emeralds, rubies, real pearls, sapphires, whether they are sold loose or as forming part of anything in which they are set” that the tax is payable at the rate of 5 per cent. But if there is no sale of any precious stone as such, and there is a contract for the purchase of a finished article of jewellery, whatever may be the component parts of that finished article of jewellery, the sale is a sale of jewellery and not a sale of any one of the component parts. So, even if the finished article of jewellery which is sold and which the customer intended to purchase, has precious stones set in it, the sale is of the jewellery and not of the precious stones. The words “whether they are sold loose or as forming part of anything in which they are set” assume importance and can have relevance only in a case where stones set in that way are themselves sold as such. But if there is no such contract of sale, and in consequence there is no sale of such precious stones, those words in the 64th item of the Second Schedule cannot assist a demand for the payment of tax at the rate specified in the third column against that entry. The petitioner, a jeweller, submitted a return in which he claimed exemption in respect of labour charges. The Commercial Tax Officer did not accept the return, but recorded a finding that the sales were sales of finished products of jewellery, which finding was not disturbed either by the Deputy Commissioner or the Sales Tax Appellate Tribunal. There was no finding that there was a sale of either gold, or a precious stone or an artificial precious stone as such. The question was what should be the rate at which the petitioner should be charged to sales tax: *Held*, (1) that whatever may be the return produced by a dealer under the Sales Tax Act and whatever may be the rate at which a dealer claims to be charged, it is the duty of the Commercial Tax Officer to make a determination of the tax really payable under the provisions of the Act which are applicable to the sales, having regard to the character of those sales determined by him; (2) that as every article of jewellery manufactured by the petitioner did have some kind of a precious stone or artificial stone, sales tax should be computed for the entire turnover of the petitioner at 2 per cent. A dealer who mentions in his return an inaccurate rate is not precluded from contending that the rate at which sales tax should be determined is the rate properly applicable and not the rate specified in his return.—*GANJAM NAGAPPA AND SONS v. STATE OF MYSORE* [1968] 21 S.T.C. 188 (Mys.).

JUDGMENT

Decision of High Court on reference under Sales Tax Act—Whether judgment.—See page 59 *supra*.

JURISDICTION

Jurisdiction of Courts.—See SUITS, OFFENCES, REFERENCE and WRITS UNDER CONSTITUTION.

Jurisdiction of officer.—Liability to pay tax and jurisdiction to assess.—See ASSESSMENT page 81 *supra*.

—See also SALES TAX AUTHORITIES *infra*.

Jurisdiction of officer—Transfer of case from one officer to another—Order of Commissioner—Legality—Mere order of transfer—Whether violates any rights of assessee—Pecuniary limits of jurisdiction—Whether refer to turnover disclosed in the return.—There is no provision in the Madhya Bharat Sales Tax Act, 1950, corresponding to section 64 of the Indian Income-tax Act, 1922, and therefore a mere transfer of a case from one Sales Tax Officer to another should not by itself constitute a violation of any of the rights conferred on the assessee under the provisions of the Sales Tax Act. Powers under rule 46 of the Madhya Bharat Sales Tax Rules, 1950, could be exercised by the Commissioner only to transfer cases pending before one Sales Tax Officer to another and the order must therefore refer to either specific cases or class of cases and the cases must, in any event, be pending. The rule does not authorise the Commissioner to pass a general order transferring the case of an assessee from one Sales Tax Officer to another. It is not correct to say that the pecuniary limits of the jurisdiction of a Sales Tax Officer must be deemed to have reference to the taxable turnover disclosed in the return because to do so would render the jurisdiction of the Sales Tax Officer dependent on the sweet will of the assessee. The assessee cannot by submitting a wrong return, confer jurisdiction on an officer who does not possess it or deprive an officer of jurisdiction which is vested in him under orders of the Commissioner. Where a petition under Article 226 of the Constitution challenging the validity of an order of assessment passed by the Sales Tax Officer did not appear to have been made in good faith but indicated *mala fides*, the petitioner was not entitled to any relief in exercise of the discretionary power vested in the High Court by Article 226.—KHEMCHAND RAJMAL v. CHIEF SECRETARY, MADHYA BHARAT GOVERNMENT AND OTHERS [1957] 8 S.T.C. 313 (M.P.).

—Dealer having several places of business—Officer having jurisdiction to assess—Scope of rule 78, Assam Sales Tax Rules, 1947.—BHARAT AUTOMOBILES, GAUhati v. STATE OF ASSAM [1957] 8 S.T.C. 537 (Assam).

—Assessment and imposition of penalty by officer who has no jurisdiction—Whether deprives competent authority of jurisdiction.—If an authority has not the power and jurisdiction to deal with a matter, then it cannot by illegal assumption of jurisdiction deprive the competent authority of the power and jurisdiction in regard to that matter.—SETH PAMANDAS SINDHI v. STATE OF MADHYA PRADESH [1963] 14 S.T.C. 74 (M.P.).

—Assessee having more than one place of business.—Where the petitioner had more than one place of business, the Sales Tax Officer who was competent to make the assessment on the petitioner or to impose a penalty for non-registration was the Sales Tax Officer of the place where the petitioner's principal place of business was situated. The Sales Tax Officer of any other place had no jurisdiction to make an assessment or to impose a penalty for non-registration and an assessment and imposition of penalty by such an officer were without jurisdiction and null and void. In such a case section 8(5) of the 1947 Act could not come into play so as to give the petitioner the fictional status of a registered dealer.—SETH PAMANDAS SINDHI v. STATE OF MADHYA PRADESH [1963] 14 S.T.C. 74 (M.P.).

—Transfer of assessment proceedings—Officer appointed by Notification dated 11th June, 1963, transferring to his own record pending case of assessment—Legality—Necessity of proper order from Excise and Taxation Commissioner—Power inherent in Commissioner—Whether arbitrary and uncontrolled.—Without a proper precise lawful order from the Excise and Taxation Commissioner transferring the assessment proceedings, it would not be lawful for an officer appointed by the Punjab Government Notification No. S. O. 242/P.A. 46/48/S-3/63 dated 11th June, 1963, to transfer to his own record pending cases of assessment from those of an Assessing Authority duly appointed under the Punjab General Sales Tax Rules, 1949. Although there is no provision in the Punjab General Sales Tax Act, 1948, specifically empowering transfer of pending proceedings, the power to transfer must be held to be inherent and implicit in the Excise and Taxation Commissioner, who is the final controlling authority and is empowered to superintend the administration and the collection of tax leviable under the Act. The exercise of this discretionary power is sufficiently guided and controlled by

the statutory purpose to be achieved by the statute, viz., the convenient and efficient assessment and collection of the tax, consistent with the reasonable convenience of the particular dealer. Its abuse and misuse in a given case can be set right at the instance of the aggrieved party in appropriate proceedings, but the discretion can by no means be held to be violative of Article 14 of the Constitution.—*KISHAN CHAND & Co. v. S. K. JAIN* [1965] 16 S.T.C. 521 (Punj.).

—*Transfer of case—Assessment made by Commercial Tax Officer, Central Circle—Validity—Jurisdiction to assess and liability to pay tax—Whether depend on validity of notices.*—Section 11 read with rule 49 is not the charging provision in the Bengal Finance (Sales Tax) Act, 1941, but merely lays down the procedure of assessment. Assessment of sales tax made without service of notice in Form VI or on the basis of irregular or incomplete notice may be at best an irregularity but does not touch the jurisdiction to assess. If as the result of an irregularity an assessee is prejudiced, the assessment may be set aside on the ground of irregularity prejudicing the assessee, but an assessment does not become a void assessment because of invalidity or irregularity or absence of notice. Where the action of the assessee-firm implied that they intended to be heard in support of their returns and were asking for an opportunity to make their submissions by production of documentary evidence in support of their returns: *Held*, that this conduct was sufficient to indicate that the assessee had substantially waived the irregularity in the notice with which the proceedings had started. When an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its powers under any other rule. The validity of an order should be judged on consideration of its substance and not its form. The assessee-firm obtained a certificate of registration as a dealer under the Bengal Finance (Sales Tax) Act, 1941, from the Commercial Tax Officer, Amratolla Charge. The assessee alleged that they submitted their quarterly returns for the quarters ending 27th January, 1960, and 24th April, 1960, and deposited the admitted amount of tax. On 7th June, 1960, the Commercial Tax Officer, Amratolla Charge, served a notice in Form VI upon the assessee stating therein, (i) that inasmuch as the assessee had not furnished any return for the quarter ending 24th April, 1960, and (ii) that inasmuch as he was not satisfied that the return filed by the assessee for the quarter ending 27th January, 1960, was correct

and complete, he proposed to assess the assessee under section 11(1). The Commercial Tax Officer thereafter made a best judgment assessment on the assessee and issued a notice of demand. The assessee preferred an appeal before the Assistant Commissioner of Commercial Taxes, Dharamtolla Circle, under the provisions of section 20(1). While this appeal was pending the assessee received a letter from the Commercial Tax Officer, Central Section, West Bengal, assuming jurisdiction over them in all matters under the Bengal Finance (Sales Tax) Act, 1941, and the Central Sales Tax Act, 1956. On 14th December, 1961, the Assistant Commissioner of Commercial Taxes allowed the assessee's appeal, set aside the assessment and directed the Commercial Tax Officer to make a fresh assessment. The Commercial Tax Officer, Central Section, assumed jurisdiction after remand and notwithstanding the assessee's objections made an order of assessment on 30th January, 1962. The assessee moved the High Court under Article 226 of the Constitution and raised, *inter alia*, the contention that there was a wrong assumption of jurisdiction by the Commercial Tax Officer, Central Section, which rendered the assessment on the assessee void and unsustainable: *Held*, that having regard to the Bengal Finance (Sales Tax) (Amendment) Act, 1962, Notification No. 13 F.T. dated 23rd August, 1947, Notification dated 14th June, 1954, relating to the delegation of powers by the Commissioner and the order of transfer made by the Commissioner in the present case, the Commercial Tax Officer, Central Section, had jurisdiction to make the assessment and therefore the assessment made on the assessee after remand could not be struck down. *Bidi Supply Co. v. Union of India and Others* [1956] (29 I.T.R. 717; 1956 S.C.A. 560) distinguished.—*MADANLAL MAHAWAR AND OTHERS v. THE COMMERCIAL TAX OFFICER, CENTRAL SECTION, WEST BENGAL, AND OTHERS* [1965] 16 S.T.C. 1071 (Cal.).

—*Filing of returns before competent officer—Issue of notices by another officer having jurisdiction over same assessee—Necessity of proper order of transfer.*—The petitioner-firm was registered as a dealer with the Assessing Authority, Amritsar, who was the competent authority for assessing it in accordance with the requisite notification dated 30th March, 1949. The petitioner filed monthly returns before that authority for the years 1961-62, 1962-63 and 1963-64. On 19th February, 1964, the Excise and Taxation Officer, Chandigarh, sent to the petitioner notices in Form S.T. XIV for the years 1961-62 and 1962-63 under the Punjab General Sales Tax Act, 1948, as also under

the Central Sales Tax Act, 1956, requiring it to appear before him on 3rd March, 1964. The notices issued by this officer were successfully challenged in *Kishan Chand and Co. v. S. K. Jain* [1965] (16 S.T.C. 521). Meanwhile on 10th August, 1964, the Divisional Enforcement Officer, Amritsar, required the petitioner to produce before him certain books of account for the years 1961-62 and 1962-63 along with certain documents. A memorandum dated 9th September, 1964, also required the petitioner to produce account books for the year 1963-64 along with certain documents. The petitioner filed a petition under Article 226 of the Constitution challenging these notices and contended that the Assessing Authority, Amritsar, was alone competent to deal with the petitioner and issue notices. It was conceded on behalf of the petitioner that the Divisional Enforcement Officer, Amritsar, did not lack inherent jurisdiction to deal with the matter: *Held*, that it would, in the circumstances of the case, serve the ends of justice if the Divisional Enforcement Officer, Amritsar, was directed to proceed further on the notices only after securing necessary orders of transfer.—*KISHAN CHAND & CO. v. K. K. OPAL, EXCISE & TAXATION OFFICER (ENFORCEMENT), AMRITSAR* [1966] 18 S.T.C. 50 (Punj).

—*Returns filed before competent officer—Issue of notices by another officer having jurisdiction over same assessee—Necessity of proper order of transfer.*—Once a Sales Tax Officer issues a notice and returns are filed before him in pursuance of the said notice and he is then seized of the matter, no other Sales Tax Authority, even if he has inherent jurisdiction, can proceed with the assessment on the basis of those returns without first obtaining a formal order of transfer of the case from the Commissioner. *Kishan Chand & Co. v. K. K. Opal, Excise & Taxation Officer (Enforcement), Amritsar* [1966] (18 S.T.C. 50) followed. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, and Others* [1963] (14 S.T.C. 976) and *Kishan Chand & Co. v. S. K. Jain* [1965] (16 S.T.C. 521) referred to.—*MANSA RAM v. J. S. RAJYANA, EXCISE AND TAXATION OFFICER (ENFORCEMENT), LUDHIANA* [1966] 18 S.T.C. 57 (Punj.).

—*Transfer of assessment proceedings—Inherent jurisdiction—Whether proper order of transfer necessary.*—The petitioner-firm registered as a dealer under the Punjab General Sales Tax Act, 1948, filed all the monthly returns for the year 1961-62 with the Assessing Authority at Amritsar and paid the tax in accordance with the returns as provided in section 10. Subsequently the Excise

and Taxation Officer (Finance Department), Chandigarh, issued notice under section 11(2) of the Act for the year 1961-62 but the petitioner successfully challenged that officer's jurisdiction to do so in *Kishan Chand & Co. v. S. K. Jain* [1965] (16 S.T.C. 521). The Joint Excise and Taxation Commissioner, Punjab, then informed the petitioner by notice dated 23rd March, 1965, that the assessment proceedings would be taken up and finalised by G., Excise and Taxation Officer, Amritsar, instead of the Excise and Taxation Officer (Finance Department) as ordered by the Commissioner on 6th March, 1965. On 10th June, 1965, the petitioner was served with a notice by the respondent M., Excise and Taxation Officer, Amritsar, in Form S. T. XIV requiring appearance on a certain day with the account books for the year 1961-62. The petitioner questioned the jurisdiction of the respondent but the respondent overruled his objection and proceeded to make a best judgment assessment. The petitioner thereupon filed an application under Articles 226 and 227 of the Constitution and contended that once the proceedings had been formally transferred by the Joint Excise and Taxation Commissioner by notice dated 23rd March, 1965, to the file of G., Excise and Taxation Officer, Amritsar, from that of the Excise and Taxation Officer (Finance Department), Chandigarh, no other officer except G., could proceed with the assessment proceedings without another formal order of transfer by the Joint Excise and Taxation Commissioner: *Held*, (1) that each case had to be considered on its own facts by properly balancing and weighing the interests of both the assessee and the revenue. As the respondent was functioning at Amritsar and was the successor of the officer before whom returns were submitted by the petitioner, he possessed inherent jurisdiction to assess the petitioner under the Act; (2) that the inherent jurisdiction conferred by the statute on the respondent could not, without express words or necessary intendment, be lost merely because at one stage the assessment proceedings had been directed to be finalised by one of the two officers, both of whom were invested with the similar inherent jurisdiction; (3) that there was neither any jurisdictional nor any other similar grave legal infirmity disclosed on the record; nor was there any manifest injustice done to the petitioner in consequence thereof which would justify interference by the High Court on the writ side; (4) that if there was any infirmity in the order of assessment on account of an illegal or an improper refusal to give to the petitioner proper and reasonable opportunity in accordance with law,

then the statutory machinery contained ample provision for redress of legitimate grievance from the departmental hierarchy and resort to the High Court on the writ side was clearly misconceived.—*KISHAN CHAND & Co. v. N. L. MURGAI, EXCISE AND TAXATION OFFICER, AMRITSAR* [1966] 18 S.T.C. 110 (Punj.).

—*Assessment made by authority having jurisdiction throughout State in the absence of order of transfer—Validity—Imposition of penalty—Legality.*—The petitioner-firm carrying on its business at Ludhiana and registered under the Punjab General Sales Tax Act, 1948, with the Assessing Authority of that place had been filing, for several years past, its returns under the Act with that officer. For the year 1962-63, however, the petitioner received notice from K the then Excise and Taxation Officer (Finance Department) at Chandigarh to appear before him for assessment. Under the Punjab Government Notification dated 11th June, 1963, this officer had been appointed by the State of Punjab under section 3 read with section 2(a) of the Act to assist the Excise and Taxation Commissioner and to frame assessments in the whole of the State of Punjab. K was later on succeeded by J, the respondent, before whom appearance was entered on behalf of the petitioner. Subsequently the respondent assessed the petitioner to tax and also imposed a penalty on it under section 10(7) of the Act. The petitioner contended that the respondent was not competent to deal with the assessment of the petitioner in the absence of an order of transfer to him by the competent authority and that the imposition of penalty under section 10(7) was illegal: *Held*, (1) that the assessment made by the respondent having jurisdiction throughout the State of Punjab would not become void merely because no order transferring the proceedings was made by the competent authority; (2) that the imposition of penalty, however, was not valid inasmuch as no notice under section 10(7) of the Act was issued to the petitioner and the petitioner was not heard on that matter. *Kishan Chand & Co. v. S. K. Jain* [1965] (16 S.T.C. 521) and *Mansa Ram v. J. S. Rajyana, Excise and Taxation Officer (Enforcement), Ludhiana* [1966] (18 S.T.C. 57) distinguished.—*REX HOSIERY FACTORY v. S. K. JAIN AND ANOTHER* [1966] 18 S.T.C. 247 (Punj.).

KARYANA

Karyana, meaning of.—The term “*karyana*” includes commodities such as *gur*, *shakkar* and sugar. The English equivalent of the term “*karyana*” is “groceries”. [The Excise and

Taxation Commissioner was directed to define precisely what is meant by “*karyana*” and to give wide publicity to this definition.]—*DAULAT RAM RAUNAQ RAM v. THE STATE* [1955] 6 S.T.C. 443.

Kirana—Meaning of—Whether includes turmeric—Whether turmeric falls under item 44, Schedule IV, Madhya Bharat Sales Tax Act, 1950, and taxable.—The word “*kirana*”, is a compendious expression which covers within its ambit goods of all sorts which are commonly vended by a grocer. When an expression like “*kirana*” is used in a taxing statute, it must be interpreted in a popular sense as commonly understood in the general usage and known in trade and commerce. The word “*kirana*” as understood in the popular and commercial sense includes turmeric. Item 44 of Schedule IV to the Madhya Bharat Sales Tax Act, 1950, as in force from 1st April, 1955, named “*kirana*” and then specified certain kinds of goods without indicating that the specific mention was merely illustrative of the goods. That being so, it was not really free from doubt whether all goods included within the meaning of the compendious word “*kirana*” were within the ambit of item 44. Since the words did not clearly and unambiguously impose the obligation, the item should be interpreted in favour of the subject, as not including turmeric. All doubt was, however, dispelled when the word “*jaise*”, meaning “such as”, was introduced in item 44 by notification dated 27th May, 1955, between *kirana* and the goods thereafter specified. Therefore sales of turmeric became taxable under item 44 with effect from 27th May, 1955.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. LADDUMAL JANGILAL OF DAULATGANJ* [1964] 15 S.T.C. 54 (M.P.).

KERALA GENERAL SALES TAX ACT

[Cases arising under the TRAVANCORE-COCHIN GENERAL SALES TAX ACT (XI OF 1125) are also included in the following index.]

—Arrears of sales tax—Recovery in a State in respect of claims arising outside State—Claims arising in Part B State prior to Constitution—Whether can be recovered under Act I of 1890—Opium and Revenue Laws (Extension of Application) Act (XXXIII of 1950)—Indian Revenue Recovery Act (I of 1890)—General Clauses Act, Secs. 6, 24.—*P. R. KRISHNA RAO v. THE MUNICIPAL SALES TAX OFFICER, ERNAKULAM* [1954] 5 S.T.C. 453.

—Assessment—Limitation—Normal assessment following provisional assessment and submission of return—Two year period prescribed by rule—

Applicability—Travancore-Cochin General Sales Tax Rules, 1950.—*E. MASOOTHU RAWTHER v. DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM, AND OTHERS* [1957] 8 S.T.C. 12.

—Dealer in bullion—Application for grant of licence retrospectively—Granting of licence for year in which application is made and refusal for other years—Legality—Assessment to sales tax for other years—Order of Commissioner declining to interfere in revision and refusal to state case—Application to High Court for directing Commissioner to state case—Maintainability—Exemption—Burden of proof—Cochin Sales Tax Act (XV of 1121), Secs. 18, 24(2)—Rules under, rule 9.—*C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER* [1954] 5 S.T.C. 121.

—Demand of tax on sales which included exports outside India—Application under Article 226 for quashing entire proceedings—Maintainability.—*THE UNITED INDUSTRIES (COCHIN) LTD. v. AGRICULTURAL INCOME-TAX AND SALES TAX COMMISSIONER, TRAVANCORE-COCHIN STATE* [1953] 4 S.T.C. 324.

—Essential goods—Scope of Article 286(3), Constitution of India—State enactment taxing essential goods passed prior to Central Act LII of 1952—Validity—Constitution of India, Article 286(3)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—*M. M. NAGALINGA NADAR & SONS v. THE TRAVANCORE-COCHIN STATE AND OTHERS* [1954] 5 S.T.C. 301.

—Jaggery—Whether an essential commodity—Levy of sales tax under Travancore-Cochin General Sales Tax Act, 1125—Legality—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952), Secs. 2, 3—Essential Supplies (Temporary Powers) Act (XXIV of 1946)—Constitution of India, Article 286(3).—*C. CHERIYAN KUNJU v. TRAVANCORE-COCHIN STATE AND OTHERS* [1955] 6 S.T.C. 203.

—Last purchase alone liable under State Act—Liability to tax on subsequent inter-State sale—Writ petition for refund of tax paid under mistake of law—Maintainability—Limitation—Central Sales Tax Act (74 of 1956), Sec. 9(1).—*V. MOHAMMED ISMAIL ROWTHER v. SALES TAX OFFICER, ADOOR, AND ANOTHER* [1968] 22 S.T.C. 410.

—Liability to pay tax—Whether depends on actual assessment—Effect of repeal of Act followed by fresh legislation—How far old rights and liabilities are affected—Principles applicable stated—Validity of assessment made under

Cochin Act after repeal of that Act by Travancore-Cochin Act—Cochin Sales Tax Act (XV of 1121)—Travancore-Cochin Interpretation and General Clauses Act (VII of 1125), Sec. 4.—*M. ABRAMAI v. COMMISSIONER OF SALES TAX, KERALA STATE, AND OTHERS* [1958] 9 S.T.C. 780.

—Mistake of law—Refund—Sale outside State—Question not raised during assessment—Subsequent claim that sales tax was paid under mistake of law—Duty of State to refund—Limitation—Constitution of India, Article 286(1)(a)—Contract Act, Section 72—Limitation Act, 1908, Article 96.—*THE STATE OF KERALA v. ALUMINIUM INDUSTRIES LTD.* [1965] 16 S.T.C. 689 (S.C.).

—Recovery—Amount payable to contractor for supply of goods to Government—Contractor authorising bank to receive payment—Adjustment of sums due to contractor towards sales tax dues from contractor—Petition by bank under Article 226 challenging adjustment—Legality—Government departments—Whether legal entities—Constitution of India, Article 226.—*THE TRIVANDRUM PERMANENT FUND LTD. v. STATE OF TRAVANCORE-COCHIN AND OTHERS* [1957] 8 S.T.C. 74.

—Refund—Works contract—Provisions levying sales tax held to be unconstitutional—Petition under Article 226 for refund of tax paid on works contracts—Maintainability—Limitation.—*C. S. MENON v. THE SALES TAX OFFICER, 2ND CIRCLE, ERNAKULAM, AND ANOTHER* [1967] 20 S.T.C. 498.

—Sale of goods—Place of sale—Right to levy sales tax—Lands occupied by Cochin-Shoranur Railway—Whether part of Madras Province for purposes of levy of sales tax—Property in goods passes when goods are loaded in railway wagons—Right of Province of Madras to levy sales tax—The (British) Foreign Jurisdiction Act, 1890—Notification of Government of India, Foreign Department No. 5096-1-B, d/Fort William dated 27th December, 1906.—*STATE OF MADRAS v. THE COCHIN COAL CO.* [1958] 9 S.T.C. 69.

—Sale of goods—Hire-purchase agreements—Whether involve sales—Liability to sales tax.—*SUNDARAM FINANCE LIMITED v. THE STATE OF KERALA AND ANOTHER* [1964] 15 S.T.C. 228 reversed in [1966] 17 S.T.C. 489 (S.C.) on appeal to Supreme Court: See below:—

—Sale of goods—Hire-purchase agreement—Financing company—Loan to purchaser of motor vehicle—"Sale letter" and hire-purchase agreement executed by purchaser—Vehicle continuing throughout in the name of purchaser—Repayment of loan extinguishing rights of financing

company—Whether sale of goods—Liability to sales tax.—*SUNDARAM FINANCE LTD. v. THE STATE OF KERALA AND ANOTHER* [1966] 17 S.T.C. 489 (S.C.).

—Sales tax—Tax realised by dealer—Whether part of turnover—Civil suit for refund of tax collected on sales tax paid by purchaser—Whether maintainable—Jurisdiction of civil court—Provision for excluding sales tax collected from purchaser in computing net turnover—Whether clarificatory.—*Travancore-Cochin General Sales Tax Rules, Rule 7(1)(l)*.—*STATE OF KERALA v. N. RAMASWAMI IYER AND SONS* [1966] 18 S.T.C. 1 (S.C.).

—States reorganisation—Single point taxation—Last purchaser in the State—Dealer in Kanyakumari district—Sale to dealers in Kerala State after States reorganisation—Who is last purchaser—Scope of section 119, States Reorganisation Act (37 of 1956).—*T. MARIASINGHA CHETTIAR v. THE STATE OF MADRAS* [1963] 14 S.T.C. 424 (Mad.).

—States Reorganisation—Fort Cochin—Sale in Fort Cochin by auction of tea stored on Willingdon Island—Liability to sales tax prior to and after 1st October, 1957, under General Sales Tax Act, 1125.—*MALAYALAM PLANTATIONS LTD. v. STATE OF KERALA* [1963] 14 S.T.C. 969.

—Supreme Court—Decision of High Court on reference under section 24, Cochin Sales Tax Act (XV of 1121)—Whether “judgment, decree or final order” within Article 133—Leave to appeal to Supreme Court—Whether can be granted—Constitution of India, Article 133.—*SALES TAX COMMISSIONER v. M. PERES & Co., LTD.* [1957] 8 S.T.C. 812.

—Sec. 2(a),(g)—“Tea”, meaning of—Green leaves, whether liable to sales tax.—*K.V. VARKEY v. AGRICULTURAL INCOME-TAX AND RURAL SALES TAX OFFICER, PEERMADÉ, AND OTHERS* [1954] 5 S.T.C. 348.

—Secs. 2(a), (d), (k) & 3—Dealer—Carrying on business—Grower of rubber trees collecting latex, converting it into rubber sheets and selling them—Whether dealer—Liability to sales tax.—*MUHAMMED AND OTHERS v. SALES TAX OFFICER, KOZHIKODE, AND ANOTHER* [1962] 13 S.T.C. 54.

—Sec. 2(d)—Sale of goods—Club—Distribution of goods by club to its members—Whether constitutes sale.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, QUILON v. SECRETARY, QUILON CLUB* [1965] 16 S.T.C. 862.

—Sec. 2(d)—Dealer—Meaning of—Person selling trees grown spontaneously in his land—Whether dealer.—*DEPUTY COMMISSIONER OF*

AGRICULTURAL INCOME-TAX AND SALES TAX v. MAMMU HAJI AND OTHERS [1967] 19 S.T.C. 45.

—Secs. 2(d), (e), (j), (k), (l) & 3—Building contracts—Materials used in construction—Liability to tax—Assessable turnover determined at 70% of amount of contract—Legality.—*GAMMON INDIA PRIVATE LTD., BOMBAY v. SALES TAX OFFICER, IRINJALAKUDA* [1962] 13 S.T.C. 50.

—Secs. 2(d), (e), (k), 5(vi)—Exemption of foodgrains—Sale of bags of rice—Whether gunny bags liable to sales tax.—*SRINIVASA PAI v. SALES TAX APPELLATE TRIBUNAL, TRIVANDRUM, AND OTHERS* [1961] 12 S.T.C. 80.

—Secs. 2(d), (g) & 3—Dealer—Sale in the course of business—Dealer in dairy products—Annual sales of dry cattle and purchase of fresh yielding stock—Whether sales of dry cattle liable to sales tax.—*GOSRI DAIRY, VYTTILA v. THE STATE OF KERALA* [1961] 12 S.T.C. 683 (F.B.).

—Secs. 2(dd), 5(vi), 12(2)(b)—Sales tax—Whether an indirect tax—Provisions in enactment imposing on dealers whose turnover exceeds a particular sum surcharge on sales tax and preventing such dealers from passing on the burden to consumers—Validity—Whether violate Article 14, 19(1)(f), (g) or 276—Maida, whether wheat and exempt from taxation—Best judgment assessment—Pre-assessment notice should indicate basis on which officer proceeds to make assessment—Kerala Surcharge on Taxes Act (XI of 1957), Sec. 3(1), (2).—*S. RAMANATHA SHENOY & Co. v. SALES TAX OFFICER, TELlicherry* [1963] 14 S.T.C. 231.

—Secs. 2(e), (j), (k), 24—Works contracts—Levy of sales tax on works contracts under Travancore-Cochin Act—Validity—Provisions of Government of India Act, 1935, or Constitution of India, 1950—Whether apply to such levy—Board of Revenue—Power to fix actual percentages of admissible deductions under rule—Non-fixation by Board—Allowance of maximum percentages—Legality—Travancore-Cochin General Sales Tax Rules, 1950, Rule 4(3)—Constitution of India, 1950, Articles 246, 277, 372—Government of India Act, 1935.—*GANNON DUNKERLEY AND Co., MADRAS (PRIVATE) LTD. v. SALES TAX OFFICER, MATTANCHERI* [1957] 8 S.T.C. 347.

—Sec. 2(e), (j), (k)(i), (l)—Works contracts—Levy of sales tax in Kerala (Part B State)—Whether violative of Article 14 of Constitution—Whether levy prohibited under Article 162—Validity of rules framed after Constitution came into force—Distinction between works contracts and sale of goods—Discriminatory legislation—

Inequality in classification—Whether itself ground for violating Article 14—Constitution of India, Articles 14, 162, 277, 372—General Sales Tax Rules, 1950, Rule 4(3).—SOUTH INDIA CORPORATION (PRIVATE) LTD. *v.* THE SECRETARY, BOARD OF REVENUE, TRIVANDRUM, AND ANOTHER [1961] 12 S.T.C. 344 (F.B.) reversed on appeal to Supreme Court, see below :

—Works contracts—Part B States—Power to continue levy of sales tax on works contracts—Effect of agreement between Union and Travancore-Cochin State in the matter of federal financial integration in that State—Whether agreement abrogates provisions of Articles 277 and 372.—SOUTH INDIA CORPORATION (P.) LTD. *v.* SECRETARY, BOARD OF REVENUE, TRIVANDRUM, AND ANOTHER [1964] 15 S.T.C. 74 (S.C.).

—Works contracts—Part B States—Right to levy sales tax—Effect of agreement between Union and Travancore-Cochin State in the matter of federal financial integration in that State—Whether right revives on expiry of agreement.—N. T. PATEL & Co. *v.* DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM [1964] 15 S.T.C. 698.

—Sec. 2(e), (j), (k)—Works contracts—Levy of sales tax on works contracts under Travancore-Cochin Act—Validity—“Law in force” in Article 372—Meaning of—Constitution of India, Articles 277, 372—Government of India Act, 1935.—SUBHODAYA CORPORATION, TRIVANDRUM *v.* THE SALES TAX OFFICER AND ANOTHER [1959] 10 S.T.C. 356.

—Sec. 2(j)—Sale of goods—Body-building contracts—Authorised dealer of manufacturing company for Dodge chassis for Kerala State—Contracts for supply of chassis fitted with bodies—Bodies built by body-builders in Madras—Whether authorised dealer mere agent for supply of bodies—Whether sale is of the entire body-built chassis.—RANE (MADRAS) LTD. *v.* STATE OF KERALA [1968] 21 S.T.C. 420.

—Sec. 2(j)—Sale—Hire-purchase agreement—Nature of transaction—Validity of explanation (1) to section 2(j).—MARIKAR (MOTORS) LTD., TRIVANDRUM *v.* SALES TAX OFFICER, SPECIAL CIRCLE, TRIVANDRUM [1967] 19 S.T.C. 18 (S.C.).

—See also SUNDARAM FINANCE LTD. *v.* THE STATE OF KERALA AND ANOTHER [1966] 17 S.T.C. 489 (S.C.).

—Sec. 2(j), (k), (l)—Works contracts—Imposition of tax on supply of materials—Legality—Provisions for determining cost of materials—Whether *ultra vires* Legislature—Constitution of

India, Sch. VII, List II, entry 54—Travancore-Cochin General Sales Tax Rules, 1950.—C. DAMODARAN *v.* THE AGRICULTURAL INCOME-TAX AND RURAL SALES TAX OFFICER, DEVICOLAM, AND OTHERS [1956] 7 S.T.C. 417.

—Secs. 2(j), (k), 26—Registered manufacturer of coconut oil—Sale of oil outside State—Right to deduction under rule 7(1)(k) read with rule 20—Whether rules denying deduction violate Articles 301 and 303(1), Constitution of India—Travancore-Cochin General Sales Tax Rules, 1950, Rules 7(1)(k), 20.—A. V. FERNANDEZ *v.* THE STATE OF TRAVANCORE-COCHIN [1955] 6 S.T.C. 22 on appeal see below :—

—Secs. 2(j), (k), 3, 26—Registered manufacturer of cocoanut oil—Sale of oil outside State—Right to deduction under rule 7(1)(k) read with rule 20—Scope of section 26—Exemption from tax and non-liability to tax—Distinction—Nature of sales falling under section 26—Travancore-Cochin General Sales Tax Rules, 1950, Rules 7(1)(k), 20—Constitution of India, Article 286.—A. V. FERNANDEZ *v.* THE STATE OF KERALA [1957] 8 S.T.C. 561 (S.C.).

—Secs. 2(j-3), 3(1)(b)—Sales tax—Toddy—Amendment Act imposing tax on sales of toddy by licence-holders—Validity—Whether unconstitutional as offending Article 19(1)(g) or 301—Scope of Articles 19(1)(g), 207 and 301—State's power of taxation—Principles stated—The General Sales Tax (Amendment) Act (XIV of 1959)—Constitution of India, Articles 19(1)(g), 207, 212, 301 and 304(b).—KESAVAN AND OTHERS *v.* THE STATE OF KERALA AND OTHERS [1960] 11 S.T.C. 747.

—Sec. 2(k)—Sales tax—Turnover—Sales tax collected by dealer prior to 1st April, 1951—Whether forms part of turnover—Amendment effected in rules before order of assessment—Effect—Travancore-Cochin General Sales Tax Rules, 1950, Rule 7.—STATE OF KERALA *v.* RAGHAVAN PILLAI [1963] 14 S.T.C. 483.

—Sec. 2(k)—Sales tax—Turnover—Sales tax collected from customers—Whether forms part of turnover.—STATE OF KERALA *v.* KAKKU BHAI & Co. [1963] 14 S.T.C. 487.

—Sec. 2(k)—Sale of goods—Works contracts—Supply of steel trusses for factory building—Whether works contracts or sale of goods.—HARRISONS & CROSFIELD LTD., QUILON *v.* THE STATE OF KERALA [1962] 13 S.T.C. 964.

—Sec. 3—Inter-State sale—First dealer in the State—Purchase of tobacco from outside State in inter-State trade and subsequent sale within State—Who is the first dealer—General Sales Tax

Rules, 1950, Rule 6.—*E. J. MATHEW v. STATE OF KERALA* [1966] 17 S.T.C. 25.

—Sec. 3—Inter-State sales—Copra—Whether an oil-seed—Nature of liability to tax—Central Sales Tax Act (74 of 1956), Secs. 14, 15.—*SALES TAX OFFICER, KOZHIKODE v. K. V. MOOSA KOYA AND ANOTHER* [1966] 18 S.T.C. 464.

—Sec. 3(1)(b)—Works contracts—Rate at which tax can be imposed.—*STANES MOTORS (SOUTH INDIA) LTD. v. STATE OF KERALA* [1967] 19 S.T.C. 209.

—Secs. 3, 5, 24—Sales tax—Notification issued under section 5(vii) fixing last purchase as taxable point—Validity—Whether *ultra vires* Government—General Sales Tax Rules, 1950, Rules 4, 7—Notification No. H1/10674/57/RD-2 dated 28th September, 1957.—*PARAMBATHKANDY ABU v. THE STATE OF KERALA* [1960] 11 S.T.C. 267.

—Secs. 3, 24—Rules providing for provisional assessment—Whether inconsistent with Act and *ultra vires* Government—Magistrate has no power to decide validity of rule—Duty to make reference to High Court—Travancore-Cochin General Sales Tax Rules, 1125, Rules 9, 10, 11—Criminal Procedure Code, 1898, Sec. 432(1).—*S. HAMSA KOYA, In re* [1957] 8 S.T.C. 18.

—Secs. 3, 5 (vii), 11-A(1)—Single point tax—Firewood—Sales of firewood by forest department to assessee and collection of sales tax from assessee at the time of sale—Whether assessee again liable to sales tax when firewood is sold to customers.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE, QUILON v. TRIVANDRUM CO-OPERATIVE DISTRIBUTIVE SOCIETY LTD.* No. 4 [1963] 14 S.T.C. 16.

—Secs. 3, 5(vii), Sch. I, item 35—Purchase tax—“Coconut including copra”—Whether coconut and copra liable to tax separately.—*POULOSE BROS. v. THE STATE OF KERALA* [1963] 14 S.T.C. 40.

—Secs. 3, 5(vii), Sch. I, item 37—Purchase tax—“Cashewnut including its kernel”—Meaning of—Liability of kernel after shelling to purchase tax—Interpretation of statutes—Statement of objects and reasons and legislative history—Whether can be referred—“And”, “including”—Meanings of—Notification dated 1st April, 1958, Item 44.—*K. A. KARIM v. THE SALES TAX APPELLATE TRIBUNAL, KERALA, TRIVANDRUM, AND OTHERS* [1963] 14 S.T.C. 36.

—Secs. 3(1), 5A(1-A), (4)—Sugar—Exemption of sale of sugar other than stock in possession, custody or control of dealer on a particular day—Goods ordered by dealer and in transit but

railway receipt endorsed in his favour by bank only after such date—Whether sugar in possession, custody or control of dealer—Liability to tax.—*A. VELAYUDHAN NADAR v. THE STATE OF KERALA AND OTHERS* [1960] 11 S.T.C. 373.

—Secs. 3(2), 26—Sale of goods—Tobacco dealer in State—Supplier outside State—Despatch of goods by rail—Railway receipt endorsed in favour of dealer within State and posted to him—Where property in goods passes—Whether sales taxable under Travancore-Cochin Act—Effect of section 26—Whether dealer in State taxable as first dealer under section 3(2), read with rule 6—Travancore-Cochin General Sales Tax Rules, 1950, Rule 6.—*K. J. MATHEW v. FIRST MEMBER, BOARD OF REVENUE, TRIVANDRUM* [1957] 8 S.T.C. 854.

—Sec. 4—Exemption—Spirituous medicinal preparations on which duty is imposed under Medicinal and Toilet Preparations (Excise Duties) Act, 1955—Whether exempt.—*JAGANNATHAN v. SALES TAX OFFICER* [1964] 15 S.T.C. 702.

—Sec. 4—Exemption—Sales of medicinal and toilet preparations—Liability to sales tax—Travancore-Cochin Prohibition Act, 1950, Secs. 7(8), 26(1).—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE, QUILON, AND ANOTHER v. PHARMACEUTICALS AND CHEMICALS (TRAVANCORE), PRIVATE LTD. AND ANOTHER* [1966] 17 S.T.C. 24.

—Sec. 5(vii)—Single point tax—Cotton yarn—Inter-State sales—Dealer inside State—“First sale in the State by a dealer”—Whether inter-State sale to dealer or sale by dealer to his customer is the “first sale in the State by a dealer”.—*R. N. RANGANATHA CHETTIAR v. THE STATE OF KERALA* [1963] 14 S.T.C. 130 (F.B.).

—Sec. 5(vii), Sch., item 5—Tax on point of first sale—Rubber products—Dealer in chappals—Rubber soles and rubber stamp mouldings assessed to tax when sold to dealer for making chappals—Further levy of tax on sale of chappals—Legality.—*MRS. ACHAMMA SEBASTIAN v. STATE OF KERALA* [1967] 20 S.T.C. 483.

—Sec. 5A(1)(i).—Exemption—Textiles—Cloth manufactured in powerlooms—Whether mill-made textile.—*LEKSHMI POWERLOOM INDUSTRIAL CO-OPERATIVE SOCIETY LTD. v. STATE OF KERALA* [1965] 16 S.T.C. 864.

—Sec. 6—Exemption—Power to grant exemption by issuing notification—Exemption granted by notification on condition that licence is taken—Effect of taking licence—Notification withdrawing exemption before expiry of licence

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—Sch. I, item 5—See Sec. 5.

—Sch. I, item 35—See Sec. 3.

—Sch. I, item 37—See Sec. 3.

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—Rule 8—See Sec. 11.

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—Rule 15—See Sec. 13.

—Rule 20—See Sec. 2 (j).

—Rule 33—Assessment—"Escaped assessment", meaning of—Scope of rule 33, Travancore-Cochin General Sales Tax Rules, 1950—Power to reopen assessment where legal error is committed in original assessment.—R. S. NARAYANA SHENOY *v.* STATE OF KERALA [1961] 12 S.T.C. 665.

—Rule 33—Assessment—"Escaped assessment"—Limitation—Rule 33, General Sales Tax Rules, 1950—Whether applies also to assessment made pursuant to order of remand made by appellate authority.—MISRILAL PARASMALL *v.* SALES TAX OFFICER, DEVIKULAM [1966] 18 S.T.C. 421.

—Rule 33 (1)—Assessment—Limitation—Tribunal setting aside orders of assessing and revisional authorities and directing officer to make fresh assessment—Limitation in rule 33(1)—Applicability.—MATHAI *v.* STATE OF KERALA [1964] 15 S.T.C. 710.

—Rule 33(1) — Reassessment — Limitation—Order exempting turnover—Subsequent issue of notice after lapse of three years for assessing that turnover—Legality.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM *v.* MATHAI [1966] 18 S.T.C. 443.

—Rule 47—Sales tax proceedings—Returns and statements made to officer—Confidential nature—Whether officer can produce them before court of law—Nature of the privilege under rule 47(1), General Sales Tax Rules, 1950, and sections 123 and 124, Indian Evidence Act—Indian Income-tax Act (XI of 1922), Sec. 54(1).—ABDULLA AND ANOTHER *v.* ASSANKUTTY [1960] 11 S.T.C. 730.

Kerala General Sales Tax Rules, 1963, Rule 15—Provisional assessment—Return filed not accepted—Necessity to comply with rule 15.—GANGADHARAN PILLAI *v.* SALES TAX OFFICER, FIRST CIRCLE, ERNAKULAM [1967] 19 S.T.C. 289.

Kerala Sales Tax (Levy and Validation) Act, 1965—Validity—Whether *ultra vires* Constitution of India—Scope of validation effected by section 4.—ANANTHANARAYANA IYER AND OTHERS *v.* STATE OF KERALA AND ANOTHER [1967] 19 S.T.C. 281.

Kerala Surcharge on Taxes Act (11 of 1957), Section 3—Best judgment assessment—Duty of taxing authorities—Principles stated—Limits of surcharge on sale and purchase taxes.—K. M. ALIKOYA & Co. v. STATE OF KERALA [1961] 12 S.T.C. 567.

—Surcharge on sales tax—Whether a tax on sale of goods—Validity of Surcharge on Taxes Act, 1957 (Kerala)—Introduction of money bill in Legislature—Want of previous recommendation by Governor—Effect of subsequent assent—Scope of Article 271—Constitution of India, Articles 207(1), 255, 271.—ERNAKULAM RADIO COMPANY v. STATE OF KERALA [1966] 18 S.T.C. 445.

—Sec. 3—Sales tax—Surcharge on sales tax—Whether Kerala Surcharge on Taxes Act, 1957, levies surcharge on transactions which took place prior to its commencement—Validity of notification issued under section 6 to remove difficulties—Notification dated 28th November, 1957.—VARKEY THOMAS AND OTHERS v. STATE OF KERALA AND OTHERS [1960] 11 S.T.C. 60.

—Sec. 3—Sales tax—Surcharge on sales tax—Kerala Surcharge on Taxes Act, 1957—Whether Act levies surcharge on turnover for whole accounting year 1957-58—General Sales Tax Act, 1125, Section 3.—VARKEY THOMAS v. STATE OF KERALA AND ANOTHER [1960] 11 S.T.C. 111.

—Sec. 3—Whether repealed by the Kerala General Sales Tax Act (15 of 1963)—Whether section 3 violates Article 14 or 19(1) (f) and (g) of Constitution—Whether it imposes tax on income, or professions, trades, callings and employments—Constitution of India, Articles 14, 19(1)(f), (g), 276; Schedule VII, List I, entry 82; List II, entry 54.—KILIKAR v. SALES TAX OFFICER, SPECIAL CIRCLE, MATTANCHERRY, AND ANOTHER [1968] 21 S.T.C. 252.

LABOUR CONTRACTS

[See also (1) BUILDING CONTRACTS, (2) DYEING, (3) ELECTRICITY, (4) JEWELLERY, (5) PACKING MATERIALS, (6) PRINTER, (7) SALE, (8) TAILOR, (9) WATCH REPAIRER, (10) WORKS CONTRACTS].

Supply of materials involving labour—Whether a sale of goods.—"The defendants, in November, 1942, put in a tender to the War Office which included, among other things, the provision and fixing of black-out curtains at some London police stations. The tender was made with reference to certain prices set out in what is called Schedule J, and the defendants' successful tender was to do the work and supply the

materials at sixteen and half per cent. below those prices. The defendants then sub-contracted with the plaintiff for the making and supplying of the curtains, together with the necessary hooks and rails, and the price quoted by the plaintiff and accepted by the defendants was twenty-seven and a half per cent. below War Office prices. The contract between the parties appears to have been made partly at an interview in November, 1942, and partly by a letter from the plaintiff dated November 25, an order dated December 18 and an acknowledgment thereof dated December 21.....It is common ground that the plaintiff quoted a price for the curtains to which the defendants agreed, and that nothing whatever was said either at the interview or in the letters as to purchase tax. The plaintiff is a manufacturer who is registered under Section 23 of the Finance (No. 2) Act, 1940, for the purposes of this tax and is accountable for it to the Crown. In this action he sought to add the amount of the tax to the contract price and the learned Judge held that he was entitled so to do. It is also common ground that in the price quoted nothing was included for purchase tax." The two questions that arose were (1) whether it was a sale of goods or a contract for work and labour and the supply of material in connection therewith and (2) whether the buyer was liable to pay purchase tax: *Held*, (1) that as the contract involved transferring to the defendants for a price chattels, namely, curtains in which they had no previous property, it was a sale of goods; (2) that the seller of goods under a contract made after the purchase tax had been imposed by law could not call upon the purchaser to pay the tax exigible in respect of the sale, in addition to the price at which he had agreed to supply the goods. *GODDARD, L.J.*, who delivered the judgment of the Court, said as follows on the first question:—"If one orders another to make and fix curtains at his house the contract is one of sale, though work and labour is involved in the making and fixing; nor does it matter that ultimately the property was to pass to the War Office under the head contract. As between the plaintiff and the defendants, the former passed the property in the goods to the defendants, who passed it on to the War Office".—*LOVE v. NORMAN WRIGHT (BUILDERS), LTD.* [1944] (113 L.J.K.B. 442; [1944] K.B. 484; 170 L.T. 346; [1944] 1 All E.R. 618) [Court of Appeal].

LEGAL REPRESENTATIVES

Arrears of sales tax—Recovery from sons of deceased dealer as legal representatives—Necessity to serve notice of demand—Liability to pay interest

—*When arises.*—Although the sons of a deceased dealer are liable as legal representatives to pay, under section 7-C of the U.P. Sales Tax Act, 1948, the tax assessed on their father, in order to enforce that liability and recover the same as arrears of land revenue, it is necessary to serve a notice of demand on them as required by section 8(1). It is only after they fail to comply with the terms of the notice of demand that the recovery proceedings can be instituted against them under section 8(8). It is only a defaulter who is liable to pay interest under section 8(1-A) and a person cannot be said to be a defaulter unless a notice of demand for the payment of sales tax is first served upon him and he commits a default thereof. *Income-tax Officer v. Seghu Buchiah Setty* [1964] (52 I.T.R. 538) followed.—*MASITULLAH KHAN AND OTHERS v. THE COLLECTOR, SHAHJAHANPUR, AND OTHERS* [1969] 23 S.T.C. 106 (All.).

—*Recovery from legal representative.*—See *ARISSETTI APPALARAJU v. ASSISTANT COMMERCIAL TAX OFFICER, BOBBILI* [1961] 12 S.T.C. 398 (A.P.).

Death of dealer—*Notices should be issued and assessment order should be passed against legal representatives to bind them.*—Under section 33-B of the Madhya Pradesh General Sales Tax Act, 1958, the legal representative of a deceased dealer is to be proceeded against as the dealer and the provisions of the Act are to be applied to him in respect of the business of the deceased dealer. In order to bind the legal representative the notices under the Act must be issued to him and the assessment order also must be passed against him. The deeming provision in the section cannot be relied upon for holding that though the notices are issued in the name of the dead person and the assessment is also made against the dead person, the assessment shall be deemed to be the assessment of the legal representative. There is no material difference between section 24-B of the Indian Income-tax Act, 1922, and section 33-B of the M.P. General Sales Tax Act, 1958. *Sk. Abdul Kadar v. Income-tax Officer, Sagar* [1958] (34 I.T.R. 451; A.I.R. 1959 M.P. 101) relied on. *Yadavindra Singh v. Income-tax Commissioner, Bombay* [1943] (11 I.T.R. 202; A.I.R. 1943 Bom. 102) distinguished.—*GOPALKISHAN, SON OF BHIMSEN SACHDEVA, AND ANOTHER v. THE SALES TAX OFFICER, CIR. NO. 2, JABALPUR, AND OTHERS* [1968] 21 S.T.C. 109 (M.P.).

Penalty—*Whether penalty can be levied on legal representative.*—A penalty under section 12(3) of the Madras General Sales Tax Act, 1959, can be

levied on the legal representative of a deceased dealer. By virtue of section 15 of the Madras General Sales Tax Act, 1959, a legal representative of a deceased dealer should be taken as a dealer for the purposes of the Act and all the provisions of the Act, including section 12(3), will apply to the deemed dealer in respect of the business of the deceased dealer. Section 15 provides both for levy of penalty under section 12(3) and also recovery thereof, the only limitation being that the recovery should be confined to the assets of the deceased in the hands of the legal representative. The scheme of section 24B of the Income-tax Act, 1922, is totally different from section 15 of the Madras General Sales Tax Act, 1959.—*THE STATE OF MADRAS v. M. RANGARAJAN* [1968] 21 S.T.C. 186 (Mad.).

Transfer of business—*Whether son liable under 1953 Act in respect of business conducted by his deceased father—Whether section 26(1) applies to transfers by devolution of law or succession.*—The legal representative of a deceased person does not fall within the definition of "dealer" contained in section 2(6) of the Bombay Sales Tax Act, 1953. No assessment proceedings can be initiated against a person as the legal representative of the deceased, in the absence of any specific statutory provision in that behalf. Under the Bombay Sales Tax Act, 1953, there is no such statutory provision and, therefore, in respect of the business carried on by a person, his son could not be held liable to tax as his legal heir. Section 26(1) of the Bombay Sales Tax Act, 1953, is intended only to apply to cases of voluntary transfers *inter vivos* and not to transfers by devolution of law or succession.—*COMMISSIONER OF SALES TAX v. ALLIMULLAH HAJI SALAMAT* [1968] 22 S.T.C. 165 (Bom.).

Transfer of business—*Whether heir or legal representative liable under 1953 Act in respect of business carried on by deceased dealer—Whether section 26(1) applies to transfers by operation of law, including succession.*—There is no provision in the Bombay Sales Tax Act, 1953, making liable the heir or the legal representative of a deceased dealer for the payment of the tax in respect of the business carried on by the deceased dealer. The word "transfer" in section 26(1) should be interpreted only as a voluntary transfer *inter vivos* by the act of parties. Therefore on the death of a dealer his heir or legal representative, who has continued the business of the deceased dealer, cannot be assessed to sales tax under the provisions of the Bombay Sales Tax Act, 1953, in respect of the turnover of the business carried on

by the deceased dealer. Under the charging section 5, the liability to pay tax is of the dealer, who must be a living person, and there is nothing in the charging section or in the definition of the word "dealer", which would include within the ambit of the charging section an heir or a legal representative. While dealing with the charging section there is no question of intendment or equity. Unless charge is created by a specific provision of the statute the taxpayer cannot be taxed on an ambiguous provision. *Commissioner of Sales Tax v. Allimullah Haji Salamat* [1968] (22 S.T.C. 165) relied on.—CHAMPAKLAL SOHANLAL v. J. H. SHAH, SALES TAX OFFICER, ENFORCEMENT BRANCH, AHMEDABAD [1968] 22 S.T.C. 507 (Guj.).

—Liability of transferee—"Transferred absolutely" in section 17, Bengal Act—Whether includes transfer on inter-State succession.—See *BIBHAS CHANDRA GON AND OTHERS v. THE STATE OF WEST BENGAL AND ANOTHER* [1964] 15 S.T.C. 277 (Cal.).

LEGISLATIVE POWERS

[See (1) CENTRAL SALES TAX ACT, (2) CONSTITUTION OF INDIA, (3) DELEGATED LEGISLATION, (4) DISCRIMINATORY LEGISLATION, (5) RULES, (6) SALE and (7) SALES TAX].

LICENCE

(See also COMMISSION AGENT and HIDES AND SKINS).

Application for licence—No orders issued on application—Whether applicant a licensee.—A person will not become a licensee, immune from the levy of sales tax under section 9 of the Travancore-Cochin General Sales Tax Act, 1125, on his mere making an application for a licence. The section exempts only persons who are licensed by the Government. There is no provision in the Sales Tax Act to the effect that when an application for a licence is made and no orders are issued thereon within a specified time, licence must be deemed to have been granted, like the provision that is found in certain Municipal Acts.—*A. M. MATHEW v. THE STATE OF TRAVANCORE-COCHIN AND ANOTHER* [1954] 5 S.T.C. 1 (Trav.-Co.).

—**Date from which exemption takes effect.**—Under section 6, a licence coupled with exemption can be granted at any time during the assessment year and when it is granted only those transactions carried out in accordance with the terms and conditions of the licence are to be exempted. Transactions carried out prior to the date of the grant of the licence cannot be said to have been

carried out in accordance with the terms and conditions of the licence and are therefore not exempted but are to be taxed under section 3. Though a licence takes effect from the date of the presentation of the application, the licence fee to be paid is not for any particular period but is dependent upon the net turnover of the whole assessment year. Therefore if an assessee applied for the licence in the middle or even at the end of the assessment year it will have to pay the licence fee calculated on the basis of the net turnover of the whole year even though it would get the benefit of the exemption only in respect of the transactions carried out by it after the date of the presentation of the application.—*THAKUR DAS HUKUM CHAND v. COMMISSIONER, SALES TAX, U.P., LUCKNOW* [1963] 14 S.T.C. 646 (All.).

Application for grant of licence retrospectively—Dealer in bullion—Granting of licence for year in which application is made and refusal for other years—Legality—Assessment to sales tax for other years—Order of Commissioner declining to interfere in revision and refusal to state case—Application to High Court for directing Commissioner to state case—Maintainability.—*C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER* [1954] 5 S.T.C. 121 (Trav.-Co.).

Breach of conditions of licence—Discovery of two sets of accounts—Sale at black-market prices—Assessment to tax without cancelling licence—Validity.—The expression "subject to" in section 5 of the Madras General Sales Tax Act, 1939, means "conditional upon". A dealer to whom a licence has been issued under section 5 to deal in cotton yarn is exempted from sales tax only if he carries on the business in accordance with the conditions of the licence and also observes such other restrictions and conditions as may be prescribed by the rules. The failure to observe, or the contravention of, any of the rules or any of the conditions of the licence would deprive him of the benefit of the section and the authorities can, in their discretion, levy sales tax. In such a case it is not necessary for the authorities to issue under rule 8 of the Madras General Sales Tax Rules, 1939, a formal order cancelling the licence. The assessee, a dealer in cotton yarn, was granted a licence under section 5 which exempted from taxation under section 3 sale of cotton yarn "subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees." On an inspection it was discovered by the department that the assessee was maintaining two sets of accounts,

one showing figures of sales in accordance with the controlled prices and another showing black-market prices. The assessee was in due course prosecuted and sentenced for offences under the Yarn Control Orders. He was also assessed to sales tax on the ground that he had lost his right to exemption owing to the breach of the conditions and restrictions prescribed by the Act. The assessee contended that as under rule 8 no order cancelling the licence was passed he could not be validly assessed to sales tax: *Held*, that as the assessee had failed to comply with the conditions and restrictions prescribed by the Act, *viz.*, maintenance of a true and correct account under section 13, he lost his right to exemption from tax under section 5 and he could therefore be validly assessed to tax although no formal order cancelling the licence was passed. *Per* KRISHNASWAMI NAYUDU, J.—Rule 8 relating to cancellation of licence is an independent enabling provision the exercise or non-exercise of the power of cancellation having nothing to do with the conditions under which the licensee could claim exemption under section 5.—*THE PROVINCE OF MADRAS v. K. R. C. S BALAKRISHNA CHETTY AND SONS Co.* [1955] 6 S.T.C. 415 (Mad.) affirmed in [1961] 12 S.T.C. 114 (S.C.). See page 540 *supra*.

—*Effect of breach—Breach of conditions of licence—Scope of section 6-A, Madras Act—Discretion of assessing authority and Appellate Tribunal.*—If a condition of the licence held by an assessee is contravened, section 6-A of the Madras General Sales Tax Act, 1939, would come into play. But that section does not make it obligatory on the assessing authority to deprive the licensee of any statutory concession to which he is entitled. The section is only permissive and leaves to the assessing authority as well as to the Appellate Tribunal discretion in the matter, which must, however, be exercised judicially. Where in exercising the discretion, the Appellate Tribunal did not take into account a relevant factor, *viz.*, whether the suppression of the turnover constituted a breach of the condition of the licence held by the assessee, it could not be said that the Tribunal had exercised the discretion properly.—*STATE OF MADRAS v. C. KARUPPAN CHETTIAR* [1957] 8 S.T.C. 38 (Mad.).

—The assessee was granted a licence under Form III contained in the Appendix to the Madras General Sales Tax Rules, 1939. The Appellate Tribunal found that the accounts regularly maintained by the assessee, on the basis of which the assessee claimed exemption from tax, were not full and proper accounts because there were material omissions of entries of

transactions: *Held*, that as there was a contravention of a condition of the licence, the assessee would lose the benefit of the exemption under sections 5 and 6 of the Act with effect from the commencement of the year in which the contravention took place for all sales and not merely for sales which had been discovered to have been omitted from the regularly kept books of account. *State of Madras v. Karuppan Chettiar* [1957] 8 S.T.C. 38; (1956) 2 M.L.J. 601 followed.—*THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. K. M. A. PARVATHAM CHETTIAR* [1957] 8 S.T.C. 590 (Mad.).

Bullion merchant—Sales at places not covered by licence—Proposed assessment at enhanced rate—Application under Article 226 for prohibition—Maintainability—Madras General Sales Tax Act (IX of 1939)—Constitution of India, 1950, Article 226.—*S. ATHIMOOLAM ACHARI v. THE DEPUTY COMMERCIAL TAX OFFICER, KOVILPATTI* [1952] 3 S.T.C. 317 (Mad.).

Classification of merchants into those who take out licences and those who do not—Validity.—See DISCRIMINATORY LEGISLATION page 494 *supra*.

Carrying on business—Stray acts of purchase—Whether licence necessary.—If a person through his agents makes purchases from various places in the State, merely because of those purchases, he cannot be treated as carrying on business at all the places to which his agents went and purchased the goods. Prior to the addition of the definition of place of business in the Madras General Sales Tax Rules in September, 1951, an assessee can be required to take out a licence only if there is a branch of the business.—*THE MAHALAKSHMI TEXTILE MILLS LTD. v. THE STATE OF MADRAS* [1954] 5 S.T.C. 252 (Mad.).

Compulsory licensing provisions for dealers in hides and skins, bullion, cotton etc.—Whether unreasonable restriction on freedom of trade—Validity—Quantum of fee—Whether reasonable—Validity of Notification No. 2044 dated 30th June, 1955, which enhanced licence fees.—The compulsory licensing provisions under the Madras General Sales Tax Act, 1939, relating to dealers in certain commodities like hides and skins, bullion, cotton, etc., which are only taxable at a single point by virtue of section 5 do not amount to an unreasonable restriction on the freedom of trade guaranteed by Article 19(1)(g) of the Constitution and are therefore not *ultra vires* or unconstitutional. In any case those provisions are within the power of the State as incidental to the power to levy taxes on the sale of goods and are not unconstitutional. The power to levy fee for licences is

clearly within the legislative power of the State, but the quantum of the fee levied should not be unreasonable. Notification G.O. No. 2044 (Revenue) dated 30th June, 1955, which by its clause 2(i) raised the maximum of licence fee payable from Rs. 1,000 to Rs. 2,000 in certain cases should, however, be struck down as an unreasonable and unjustifiable enhancement of the fees. The licensing is a means to keep track of the dealings in goods subjected to single point taxation as they passed from dealer to dealer within the State and it is necessary to check evasion and secure efficient administration of the law levying sales tax at a single point. There is therefore no constitutional objection to the licensing being made a pre-requisite for carrying on the trades. The restrictions permitted by sub-clauses (2) to (6) of Article 19 of the Constitution follow a pattern, *viz.*, that they are imposed by the Legislature for reasons of public policy. The precise aspect of public policy involved in the case of each of the several fundamental rights conferred by the several sub-clauses of Article 19(1) might differ, but one underlying principle—the requirement of public policy—runs through the various classes of restrictions and pervades the scheme. Public policy may spring by reason of the principles of common law, like decency, morals or public order, which are the very foundation of the society. Public policy, however, might equally have its origin in the statute law of the country. In regard to avoidance of transactions on the ground of their being contrary to public policy, the courts have not from the earliest times drawn any distinction between the unwritten common law and enacted legislation, the contravention of either always being treated as contrary to public interest. It is, therefore, not correct to assume or postulate that a restriction or regulation imposed must flow from the inherent nature of the trade intrinsic to the commodities dealt with or the articles manufactured, and could not be founded on public interest originating in factors extrinsic to the trade. If a tax were a restriction which could be legally imposed on a business, the right to carry on which was guaranteed by the Constitution, the validity of the tax cannot be judged by standards applicable to regulations or restrictions imposed on the manner of carrying on the business—restrictions which flow from the nature of the commodity or the repercussions of an unregulated trade on the health, morality or safety of the public. If licensing was the machinery by which the Sales Tax Act is or can be enforced, this being the usual and well-recognised mode in which the enactment could be worked so as to facilitate

collection and check evasion, if licensing were a necessary adjunct to a tax system where only certain commodities were taxed at a single point and that point is not the same for all the commodities so taxed, the system of licensing becomes, so to speak, an integral and inseparable part of the tax measures. In such a situation the tests which such licensing ought to satisfy are not those set out in Article 19(6) but would rather be ancillary to an exercise of the taxing power of the State. If the validity of such a licensing system were challenged, the enquiry would be whether or not the legislation regarding licensing is comprehended within the relevant taxation entry, which would be answered in the affirmative if licensing were the usual method employed for gathering the revenue, *i.e.*, if it were ancillary or incidental to the taxing power. If licensing were needed to ensure that the tax was at a single point and at no more than a single point, a keeping track of the dealings in these special commodities became essential and this necessitated a staff to check them. A dealer with larger turnover had more transactions than one with a smaller one, and therefore the former occupied more time of the departmental officers, and there was therefore nothing unreasonable in his being asked to pay more than the one with a smaller turnover and therefore normally a lesser number of transactions. Separate licences for separate business places are not unreasonable since it would certainly facilitate checking, and separate fees being charged for each licence would be a necessary corollary to separate licences.—V. GURUVIAH NAIDU AND BROTHERS AND OTHERS *v.* THE STATE OF MADRAS AND OTHERS [1957] 8 S.T.C. 690 (Mad.).

Compulsory licensing provisions and fees prescribed therefor—Validity—Application after prescribed date without fee showing estimated turnover which exceeded prescribed minimum—Actual turnover less than minimum—Prosecution for not taking licence—Maintainability.—The compulsory licensing provisions under the Madras General Sales Tax Act, 1939, relating to dealers in cotton yarn do not amount to an unreasonable restriction on the freedom of trade guaranteed by Article 19(1)(g) of the Constitution and are therefore not unconstitutional. The fee levied for the licence is not in the nature of a tax and also is not in excess of the value of the services rendered. The petitioners, who were dealers in cotton yarn, should have applied for the licence and paid the licence fee before the 30th September, 1955, as required by rule 5(1) of the Madras General Sales Tax Rules, 1939, as amended by G.O. No. 1898

dated 17th June, 1955. The petitioners submitted the application on 22nd November, 1955, showing an estimated turnover of Rs. 53,000; but they did not pay the licence fee. In a prosecution under rule 32 of the Rules, the petitioners contended that as their actual turnover for that year was only Rs. 4,521, they were not obliged to apply for a licence nor pay any licence fee: *Held*, that having shown an estimated turnover of Rs. 53,000, the petitioner should have complied with the obligatory provision of law which compelled them to take out a licence and pay the prescribed fee in advance. As they failed to do so, there was an infringement of the rules, which made them punishable under rule 32 and section 15(b) of the Act. *V. Guruviah Naidu and Brothers v. The State of Madras and Others* [1957] (8 S.T.C. 690) followed.—R. P. RAMUDU IYER AND SONS, *In re* [1957] 8 S.T.C. 805. (Mad.).

Licence fee paid for liquor, drug and opium shops—Whether should be deducted from turnover.—See *SHIVA DAYAL JAISWAL v. SALES TAX COMMISSIONER, U. P., LUCKNOW* [1951] 2 S.T.C. 192 (All.).

Licence fees—*Dealer paying provisional fee and obtaining licence*—*Whether can refuse to pay balance of fee and claim to be assessed as unlicensed dealer.*—Where an assessee dealing in hides and skins, having applied for a licence and obtained it after paying the provisional fee of Rs. 25 under the Madras General Sales Tax Act, 1939, and the rules framed thereunder, could not after the year of assessment refuse to pay the balance of the licence fee payable under the rules and insist on getting himself treated and assessed as an unlicensed dealer. Neither the Act nor the rules make it obligatory on the assessing authority to cancel the licence if the conditions are not fulfilled or to treat the licensed dealer as an unlicensed dealer merely because he has not paid the balance of the licence fee demanded of him, nor is there anything to preclude the assessing authority, who cancels the licence, from not recovering the balance of the licence fee. It is true that the acceptance of a licence does not impose any obligation on the licensee to exercise the privilege or to engage in the business covered in the licence. But once he exercises the privilege or engages in the business on the terms of that licence, he cannot withdraw from it, nor can the Sales Tax Authorities refuse to give him the privilege, if he fulfils the conditions of the licence. The statute provides for the cancellation of the licence or for treating the assessee as an unlicensed dealer if

he omits to do what he is liable to do under the licence. That is quite a different thing from saying that he has an option to ask to be treated as an unlicensed dealer. The balance of the licence fee payable by an assessee is a "fee due from him under the Act" and apart from the question of the assessee being exposed to criminal prosecution under section 15, it becomes a debt payable to the State on the issue of a notice of demand and it can be recovered under section 52 of the Madras Revenue Recovery Act, 1864. Where a licensed dealer in hides and skins claimed exemption from sales tax on the ground that his purchases were from unlicensed dealers, the burden was on him to establish that those from whom he purchased were unlicensed dealers. The fact that he had purchased from the shandies did not by itself establish that his purchases were from unlicensed dealers. He should have led evidence to establish that only unlicensed dealers operated in the shandies. In any case this was a question of fact and it was not permissible for the High Court to interfere with it in revision.—*K. M. KHUDRATHULLA & Co. v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 595 (A.P.).

Licence fee—Whether tax.—See *NAGARAJA SETTY v. DEPUTY COMMISSIONER OF COMMERCIAL TAXES* [1962] 13 S.T.C. 578 (Mys.) and *YADALAM LAKSHMINARASIMHAH v. STATE OF MYSORE* [1962] 13 S.T.C. 583 (Mys.) affirmed on different grounds in [1965] 16 S.T.C. 231 (S.C.).

—*Fixation of licence fee by Rules*—*Validity.*—The levy under section 6 of the Mysore Sales Tax Act, 1957, read with rule 25 of the rules framed thereunder, though labelled as a fee, is really a tax. As the Legislature has fixed the maximum fee that can be levied, the licence fee that can be levied by the rule-making authority cannot exceed the maximum fixed by the Legislature and therefore it cannot be said that by authorising the rule-making authority to fix the licence fee payable, there was any abdication of legislative power by the Legislature. No imposition of tax can be held to be an invalid imposition merely because its incidence is high. The right of appeal is not a fundamental right and it must be provided under some statute. An assessee cannot complain if the Legislature did not provide any right of appeal against a tax imposed on him. The validity of rule 25(4) of the rules framed under the Mysore Sales Tax Act, 1957, was assailed on the following grounds:—(1) The imposition of tax under the rule being the exercise of a legislative power and the same having been delegated to the rule-making authority without giving any guidance for its exercise was

void in law; (2) The levy prescribed under the rule was highly excessive and therefore it was invalid; (3) There was no right of appeal against the levy, and the differentiation in the matter of the right of appeal between the licence-holder and an assessee paying sales tax, amounted to a discrimination coming within the mischief of Article 14 of the Constitution; (4) The differentiation between a licence-holder and an assessee paying sales tax, in the matter of passing on the burden of tax to the consumer, was opposed to the equality clause in the Constitution; (5) The rules having come into force on 1st November, 1957, an assessee whose assessment year commenced from 1st October, 1957, could not be taxed for the period from 1st October, 1957, to 23rd October, 1957, under the rules: *Held*, rejecting all the contentions, that rule 25 was valid and the levy of licence fee was also legal.—*C.S. Nagaraja Setty and Another v. Deputy Commissioner of Commercial Taxes, City Division, Bangalore* [1962] (13 S.T.C. 578) relied on. *Shanmugha Oil Mills v. Coimbatore Market Committee* (A.I.R. 1960 Mad. 160) referred to.—*KOKATI v. COMMERCIAL TAX OFFICER, CIRCLE II, HUBLI* [1963] 14 S.T.C. 84 (Mys.).

—*Turnover for computing licence fee under Madras General Sales Tax Rules.*—The expression “turnover” in rule 6(4)(a) of the Madras General Sales Tax Rules, 1939, does not mean the totality of the sales of the dealer. Inherent in the provision for a scale of graduated licence fee and for different quantum of fee in respect of different goods, the expression “turnover” in rule 6(4)(a) must be interpreted in relation to its context and the turnover would accordingly mean only that part of the total turnover of the dealer in respect of which a licence is required under section 5. Therefore for the purpose of computation of the licence fee under rule 6(4)(a) only that part of the turnover of the dealer which comes within the scope of section 5 of the Act either eligible to total exemption from tax or to concessional rate of tax or at a single point that should be taken into account. No part of the turnover which is taxable at the normal rate under section 3 could be brought into the turnover for the purpose of section 5 or for the computation of the licence fee under the rules. The maximum licence fee leviable cannot however exceed Rs. 1,000.—*Guruvayya Naidu v. The State of Madras* [1957] (8 S.T.C. 699) referred to.—*THE STATE OF MADRAS v. THE ERODE YARN STORES* [1961] 12 S.T.C. 175 (Mad.).

Notification granting exemption on condition that licence is taken—Effect of taking licence—

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Notification withdrawing exemption before expiry of licence period—Whether licensee entitled to claim exemption for the entire licence period.—*STATE OF KERALA v. M. VELAYUDHAN* [1963] 14 S.T.C. 382 (Ker.) (See page 541 *supra*).

Power to issue licence and power to levy tax—Whether same.—The power to issue a licence is different from the power to levy a tax. The coincidence of both the powers in the same officer or the simultaneity of their exercise does not create a coalescence of the two or constitute the grant or refusal of a licence a part of the process of assessment to sales tax. Ignorance of the rules requiring the taking out of a licence cannot be a ground under which exemption from tax can be claimed.—*C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE AND ANOTHER* [1954] 5 S.T.C. 121 (Trav.-Co.).

Licence—Inter-State sales—Sales Tax Laws Validation Act—Whether empowered States to levy tax on inter-State sales—Failure to hold licence—Effect on liability to sales tax—Composite assessment—Splitting up—Whether permissible—Constitution of India, Article 286(2)—Sales Tax Laws Validation Act, 1956—Jammu and Kashmir Motor Spirit (Taxation of Sales) Act, 2005, Secs. 3, 6, 7(4).—THE STATE OF JAMMU AND KASHMIR AND OTHERS v. CALTEX (INDIA) LTD. [1966] 17 S.T.C. 612 (S.C.) (see pages 361-362 *supra*).

LIMITATION

(See also APPEAL, REVISION and REFERENCE)

Limitation for normal assessment and assessment of escaped turnover.

ANDHRA PRADESH

Period of limitation enlarged before right to reassess is barred—Applicability of new law.—Where the period of limitation prescribed by law for making a reassessment is enlarged before the right of the assessing authority to reassess is barred, it is the amended law that determines the liability of the assessee and the assessing authority will be entitled to make a reassessment within the enlarged period. For the assessment year 1953-54 an assessment order was made on 12th March, 1955. On 8th March, 1957, the assessing authority issued a notice to the assessee to show cause why he should not be reassessed on a turnover which had escaped assessment. The assessee thereupon filed a writ petition and obtained an order from the High Court on 18th March, 1957, restraining the officer to proceed further with the revision of assessment. This writ petition was

dismissed by the High Court on 18th February, 1959. On 10th June, 1959, the officer issued a notice to the assessee and revised the assessment by his order dated 31st July, 1959. The assessee contended that the period of limitation for making the reassessment for the year 1953-54 was governed by rule 17(1) of the Madras General Sales Tax Rules, 1939, and the period of three years prescribed by that rule having expired on 31st March, 1957, the revised assessment was barred by time: *Held*, that section 14 of the Andhra Pradesh General Sales Tax Act, 1957, as amended in 1958, applied to the case and the revised assessment was therefore within time.—*IMMIDISETTI RAMAKRISHNAIAH v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 914 (A.P.).

Computation of period—Period during which stay order of High Court is in force—Whether should be excluded.—An act of Court cannot prejudice any one and therefore the period during which an order of stay of the High Court is in force has to be excluded in computing the period of limitation.—*IMMIDISETTI RAMAKRISHNAIAH v. STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 914 (A.P.).

Assessment of escaped turnover—Limitation.—If the whole or any part of the turnover of the business of a dealer has escaped assessment to the tax payable in any year, the assessing authority may, under rule 32(1) of the Hyderabad General Sales Tax Rules, 1950, levy the assessment at any time within the year of assessment or three years from the end of the year to which the tax relates.—*JAI DAYAL v. DEPUTY COMMERCIAL TAX OFFICER* [1960] 11 S.T.C. 782 (A.P.).

Assessment—Return—Limitation—Voluntary submission of return more than three years after close of accounting year—Whether assessment can be made on the basis of return—Whether Act provides limitation for final assessment—Applicability of rule 32 when return is rejected and best judgment assessment is made—"Rejection", meaning of.—Under the Hyderabad General Sales Tax Act, 1950, and the rules framed thereunder, it is open to the department to accept a return submitted by an assessee as the basis of assessment even after the expiry of the period prescribed by the statutory rules. There is no legal bar to complete the assessment on the return so made. Though the assessee could not claim as of right to have the delay condoned in the submission of the return, it was competent for the taxing authority to excuse the delay in the exercise of its discretion and make the assessment on the basis of it. There can, therefore, be no obstacle in the way of the department making an

assessment on the basis of the return, voluntarily submitted more than 3 years of the close of the relevant accounting year. When once a return is filed or assessment proceedings are started in time the final assessment need not be completed within three years since the Act does not lay down any period within which the final assessment should be made, although the officers are expected to make the final computation in the succeeding year. There is nothing in the Act or in the rules which fixes a definite period of limitation excluding the jurisdiction of the taxing authority to finalise it after the closing of the succeeding year. But where no return is made or if made has been rejected by the taxing authority for any of the reasons, and the taxing authority has recourse to rule 16, then it should be dealt with under rule 32, i.e., within the period fixed under rule 32.—*THE STATE OF ANDHRA PRADESH v. DONTALA RAJAIAH* [1960] 11 S.T.C. 819 (A.P.).

Turnover escaping assessment—Repeal of Madras Act by Andhra Pradesh Act—Additional assessments for periods when Madras Act was in force—Whether can be made under Andhra Pradesh Act—Limitation enlarged by Andhra Pradesh Act before assessment became final—Applicability of enlarged period.—For the years 1955-56, 1956-57 and 1957-58 additional assessments were made on the assessee under section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, on certain escaped turnovers detected by the department in May, 1959. The assessee objected to the assessments on the grounds, (1) that an additional assessment could not be done under the Andhra Pradesh General Sales Tax Act, 1957, in respect of transactions made when the Madras General Sales Tax Act, 1939, was in force; (2) that the assessment for 1955-56 was barred by limitation as being beyond the three year period in rule 17 of the Madras General Sales Tax Rules, 1939: *Held*, (1) that section 41(1) of the Andhra Pradesh General Sales Tax Act, 1957, had preserved intact the obligation of an assessee to pay tax already incurred under the Madras General Sales Tax Act, 1939, and also necessarily protected the corresponding right of the assessing authority to assess and recover the same. The additional assessments being but a continuation of the original assessments it was within the competence of the assessing authority to proceed with the additional assessments notwithstanding the repeal of the Madras Act, provided they were not barred by time; (2) that where the period of limitation prescribed by law is enlarged before the right of the assessing authority to reassess is barred, it is

the amended law that determines the liability of the assessee; (3) that an assessment already made would not be said to have become final the moment it is made but becomes final only after the period for filing appeal or revision or for making additional assessment has expired; (4) that as in these cases the old period of three years had not expired when section 14(4-A) of the Andhra Pradesh Act came into force the assessing authority would be well within its right in making additional assessments within the enlarged period of four years next succeeding the assessment year prescribed by section 14(4-A). *K. Kanniah v. Deputy Commercial Tax Officer, Guntur-1, and Others* [1964] (15 S.T.C. 689) followed.—*T. K. KHADAR MOHIUDDIN v. STATE OF ANDHRA PRADESH* [1968] 21 S.T.C. 45 (A.P.).

Best judgment assessment—Limitation—Penalty proceedings initiated after period prescribed for best judgment assessment—Legality.—Penalty proceedings under section 14(2) of the Andhra Pradesh General Sales Tax Act, 1957, should commence within the period of four years prescribed for making the best judgment assessment under section 14(1). It is however not necessary that the penalty should be levied simultaneously with the making of the best judgment assessment. [The question whether penalty proceedings must also be completed within four years was left open.] *Radhakrishna and Co. v. State of Andhra Pradesh* [1962] (13 S.T.C. 117) distinguished.—*THE STATE OF ANDHRA PRADESH v. RIKABCHAND SIREMAL & CO. AND OTHERS* [1968] 22 S.T.C. 304 (A.P.).

—See also Madras cases digested *infra*.

BIHAR

Right to make fresh assessment directed by appellate or revisional authority after expiry of two years.—The proviso to section 10(6) of the Bihar Sales Tax Act, 1944, provided that no order assessing the amount of tax due from a dealer in respect of any period should be passed later than 24 months from the expiry of such period: *Held*, that the proviso in its true meaning and effect was restricted in its application to an original order of assessment and did not affect the power of review under section 20(4) or apply to a fresh order of assessment directed by the appellate or revisional authority. The principle laid down with regard to the provisions of sections 24, 26 and 27 of the Bihar Agricultural Income-tax Act, 1938, and sections 33, 34 and 35 of the Indian Income-tax Act, 1922, cannot be applied with regard to the provisions contained in the proviso to section 10(6) and section 20 of the Bihar Sales Tax Act,

1944.—*GAJO RAM BASANT RAM AND ANOTHER v. THE STATE OF BIHAR* [1956] 7 S.T.C. 248 (Pat.).

Change of law—Limitation—Law applicable to assessment.—Where proceeding for assessment under section 13(5) of the Bihar Sales Tax Act, 1947, was started against the assessee on 29th June, 1950, for the period 1st July, 1947, to 31st March, 1948, but the assessee contended that section 13(6) as amended by Bihar Act VI of 1949 providing four years for the initiation of proceeding was not applicable to the case and as the proceeding was initiated two years after the expiry of the period it was barred under section 13(6) before its amendment by Act VI of 1949: *Held*, that the right of the authorities to take proceedings for assessment under the old law had not become barred when Bihar Act VI of 1949 was passed and came into effect and therefore the proceeding initiated against the assessee was governed by section 13(6) as amended by Bihar Act VI of 1949 and it was legally valid and not barred by limitation.—*THE STATE OF BIHAR AND ANOTHER v. RADHA KRISHNA KAMALA PRASAD* [1957] 8 S.T.C. 440 (Pat.).

BOMBAY

Issue of notice under section 11(5) for periods prior to 1956—Scope of sections 11(5) and 11A—Applicability of limitation prescribed by section 11A—Whether can be considered in application under Article 226.—Whereas section 11(5) of the Bombay Sales Tax Act, 1953, deals with the case of a dealer who, though required to be registered under the Act, has not applied for registration, section 11A of the Act deals with the case of a person who is a registered dealer. Where the Sales Tax Officer, after the expiry of 3 years from the relevant period of assessment, issued a notice under section 11(5) to the assessee, who prior to 1956 did not apply for registration, but the assessee filed an application under Article 226 of the Constitution and contended that as section 11(5) did not contain any rule of limitation, the limitation prescribed by section 11A should be applied and the notice issued was therefore out of time: *Held*, that as the Sales Tax Officer was not acting in excess of jurisdiction in issuing the notice under section 11(5), and as the Sales Tax Act contained a machinery to determine the question whether the notice was barred by limitation or not, the application under Article 226 was not maintainable.—*C. J. VAIDYA v. S. G. BARVE, SALES TAX OFFICER, SHOLAPUR DISTRICT* [1958] 9 S.T.C. 128 (Bom.).

Assessment under 1946 Act—Issue of notices under 1953 Act to revise assessment after expiry of eight years—Legality of notices—Whether notices issued were beyond time.—The assesseees were assessed to sales tax for the assessment years 1948-49 and 1949-50 on 4th May, 1951, under section 11 of the Bombay Sales Tax Act, 1946. On 13th June, 1958, the Assistant Collector of Sales Tax issued notices to the assesseees informing them that they had suppressed sales from the regular books of account of those years and it was proposed to revise the assessments of those years. The two notices issued were in Form XXIV prescribed under the Bombay Sales Tax Act, 1953, but there was no reference in the notice itself to the provisions of the Act of 1953. The assesseees filed an application under Article 226 of the Constitution and contended (1) that whereas the assessment proceedings against the assesseees for the two years were taken under the Bombay Sales Tax Act, 1946, the notices to revise the assessments were issued under the provisions of the Bombay Sales Tax Act, 1953, and therefore the notices were illegal and could not form the basis of proceedings for revising the assessments; (2) that the notices for revision of assessment were issued more than eight years after the expiry of the period of assessment and in view of the provisions contained in section 15 of the Bombay Sales Tax Act, 1953, and the corresponding provisions contained in section 14 of the Bombay Sales Tax Act, 1946, they were barred by limitation, and that, in any event, the notices were issued after an unreasonable lapse of time: *Held*, (1) that the Assistant Collector of Sales Tax had authority to issue the notices and to conduct the proceedings for reassessment of the liability, if any, of the assesseees under the Act of 1953; (2) that although the revisional jurisdiction must be exercised within a reasonable time and the yard-stick of reasonableness would be the period prescribed for reassessment, as the Legislature had intervened and amended the Act of 1953 by the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959, it must be said that the notices issued were not beyond time and were therefore not invalid. By Act XXII of 1959, the rule of interpretation adopted by the High Court in *Narsee Nagsee's case* [1957] (31 I.T.R. 164) and applied in cases under the Sales Tax Act had been expressly superseded. The widest retrospective operation is given to section 15(2)(a)(i) of the Bombay Sales Tax Act, 1953, which was inserted in the Act by the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959.—*MANORDAS KALIDAS v. V. V. TATKE* [1960] 11 S.T.C. 87 (Bom.).

Limitation—Bombay Sales Tax Acts, 1946, 1953 and 1959—Assessment year ending 31st March, 1953—Issue of notice for reassessment in June, 1960—Where notice barred by time.—Where the petitioner was assessed to sales tax for the period 1st April, 1949, to 31st October, 1952, but on 17th June, 1960, the Deputy Commissioner of Sales Tax issued a notice to the petitioner stating that the turnover of purchase of the petitioner during the above period had escaped assessment: *Held*, (1) that the action which the Deputy Commissioner proposed to take was covered by the powers granted to the Commissioner by section 35 of the Bombay Sales Tax Act, 1959, and the Deputy Commissioner was not entitled, in view of section 77(1)(a) of the 1959 Act, to fall back upon any provisions of the 1953 Act for the purpose of subjecting the escaped turnover to assessment; (2) that as clauses (a) and (b) of section 35(1) of the 1959 Act did not apply to the case, action under section 35 could be taken against the petitioner only within five years from the end of the year of assessment; (3) that the notice issued by the Deputy Commissioner was therefore barred by time. *Manordas Kalidas v. V. V. Tatke* [1960] (11 S.T.C. 87; 61 Bom. L.R. 1560) referred to.—*MRS. CHATURBAI NARAINDAS v. H. B. MUNSHI, DEPUTY COMMISSIONER OF SALES TAX* [1962] 13 S.T.C. 350 (Mah.).

—See also *REVISION infra*.

Escaped turnover—Assessment—Limitation.—A turnover which falls within section 14(3) of the Bombay Sales Tax Act, 1953, also falls within section 15 of that Act. The assessing authority may either assess that turnover under section 15 or under section 14(5). If he adopts the former course he has to give a notice in Form 14. But if he adopts the latter course he has to issue a notice in Form 13. In either case he has to give the required notice within the time prescribed under section 15. Under section 15 limitation is prescribed for issuing the notice contemplated by that section and not for making the assessment. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, and Others* [1963] (14 S.T.C. 976) followed.—*RAJARAM FACTORY, HUBLI v. STATE OF MYSORE* [1966] 18 S.T.C. 43 (Mys.).

Escaped turnover—Assessment—Limitation—Unregistered dealer.—The expression "escaped assessment" includes a turnover which has never been assessed either for one reason or other. There is no escaped assessment if proceedings in respect of the first assessment are pending and the assessment is not completed. Assessment proceedings do not start unless the dealer produces

his return or there is a requisition for further information. These principles enunciated by the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax* [1963] (14 S.T.C. 976) are equally applicable to cases arising under the Bombay Sales Tax Act, 1953. The general scheme of the Bombay Sales Tax Act, 1953, and that of sections 14 and 15 of that Act impels the view that the period of limitation prescribed by section 15 should be imported into section 14 although section 14 prescribes no such period of limitation. A person who produces no return or no further information though called upon to do so should not be exposed to the harassment of a proceeding which is not possible under section 15 after the expiry of the period of limitation prescribed by it. Sub-sections (2), (3), (4) and (5) of section 14 regulate not only the assessment of a registered dealer but also that of an unregistered dealer. The period of limitation prescribed by section 15 is not confined to the assessment of escaped turnover of a registered dealer but is equally applicable to the assessment of an unregistered dealer's turnover. Therefore an assessment under section 14(6) of a dealer who has failed to apply for registration cannot be made beyond the period of limitation prescribed by section 15. That assessment being in truth and in reality the assessment of an escaped turnover, although it is the escaped turnover of a person who did not apply for registration and therefore did not become a registered dealer, is governed by the period of limitation prescribed by section 15 in the same way in which the assessment of any other escaped turnover is governed.—*MYSORE KIRLOSKAR LTD. v. THE STATE OF MYSORE AND ANOTHER* [1966] 18 S.T.C. 154 (Mys.).

DELHI

Limitation in section 11(2a)—Whether should be calculated from end of year—Even if the taxable period be a quarter, the period of limitation provided in section 11(2a) of the Bengal Finance (Sales Tax) Act, 1941 (as extended to Delhi) has to be calculated from the end of the relevant year.—*PREM RAJ AND SONS v. THE SALES TAX OFFICER, WARD NO. 9, DELHI, AND ANOTHER* [1967] 19 S.T.C. 531 (Punj.).

Assessment—Limitation—Scope of section 11(1), Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi.—The limitation of 18 months provided in section 11(1) of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi comes in only where the authorities have to make a best judgment assessment. If, on the other hand,

best judgment assessment is not to be made, there is no requirement to take any steps within 18 months, though, in that case, the revenue will be obliged to accept the returns filed by the registered dealer and tax as due on the basis of said returns. Where the Sales Tax Officer felt that a notice issued on 2nd June, 1958, under section 11(1) for the quarters ending 30th June, 1956, and 30th September, 1956, had not been issued in accordance with the section and therefore vacated the same and proceeded by his order dated 16th September, 1958, to accept the returns filed by the petitioners and the tax deposited by them: *Held*, that no exception could be taken to the order passed by the Sales Tax Officer.—*HARI MAL DHARAM VIR AND ANOTHER v. R. N. GUPTA, SALES TAX OFFICER, WARD NO. 11, AND ANOTHER* [1967] 20 S.T.C. 15 (Punj.).

KERALA

Normal assessment following provisional assessment and submission of return—Two year period prescribed by rule—Applicability.—The petitioner who was assessed to sales tax under the Travancore-Cochin General Sales Tax Act, 1125, for the period 17th August, 1949, to 29th May, 1950, contended that the assessment was bad inasmuch as it was made on a date subsequent to the two year period prescribed by rule 33(1) of the Travancore-Cochin General Sales Tax Rules, 1950. The petitioner had submitted a return of his turnover on 18th October, 1951, but he denied his liability to tax. There was also a provisional assessment on 8th December, 1949, and the petitioner had paid tax on the basis of that assessment: *Held*, that the assessment was a normal assessment and was therefore valid; the sub-rule did not apply to a case like this but to cases where the turnover of a dealer had "escaped" assessment to the tax.—*E. MASOOTHU RAWTHER v. DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, TRIVANDRUM, AND OTHERS* [1957] 8 S.T.C. 12 (Trav.-Co.).

Assessment—Limitation—Tribunal setting aside orders of assessing and revisional authorities and directing officer to make fresh assessment.—Where the Sales Tax Appellate Tribunal set aside the orders of the assessing and revisional authorities and directed the officer to make a fresh assessment, such fresh assessment by the officer must be governed by rule 33(1) of the General Sales Tax Rules, 1950, and must be completed within the period of three years mentioned in that rule.—*MATHAI v. STATE OF KERALA* [1964] 15 S.T.C. 710 (Ker.).

"Escaped assessment"—Limitation—Rule 33, General Sales Tax Rules, 1950—Whether applies also to assessment made pursuant to order of remand made by appellate authority.—Where in respect of the year 1957-58 notices were issued to the petitioner on 3rd March, 1960, and 3rd June, 1960, the proceedings which ultimately resulted in the assessment of the petitioner amounted to a case of "escaped assessment" within the meaning of rule 33 of the General Sales Tax Rules, 1950. There can be no assessment or reassessment by the Sales Tax Officer either *suo motu* or in pursuance of an order of remand by the appellate authority beyond the period of limitation indicated in rule 33. *State of Orissa v. Debaki Debi and Others* [1964] (15 S.T.C. 153) and *Jaipuria Brothers Limited v. State of Uttar Pradesh and Others* [1965] (16 S.T.C. 494) relied on. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, and Others* [1963] (14 S.T.C. 976) referred to.—*MISIRILAL PARASMALL v. SALES TAX OFFICER, DEVIKULAM* [1966] 18 S.T.C. 421 (Ker.).

Reassessment—Limitation—Order exempting turnover—Subsequent issue of notice after lapse of three years for assessing that turnover—Legality.—Where an order was passed in relation to the year 1955-56 exempting the entire turnover of an assessee, turnover for that year had escaped assessment (assuming it was taxable) and no steps could be taken after 31st March, 1959 (after the lapse of three years from the close of the year of assessment) for assessing that turnover by reason of rule 33(1) of the General Sales Tax Rules, 1950. *Mathai v. State of Kerala* [1964] (15 S.T.C. 710; 1964 K.L.T. 483) explained.—*DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM v. MATHAI* [1966] 18 S.T.C. 443 (Ker.).

Escaped turnover—Repeal and re-enactment of statutes—Escaped turnover under repealed Act assessed after commencement of new Act—Legality—Limitation.—The General Sales Tax Act, 1125, was repealed and replaced by the Kerala General Sales Tax Act, 1963, on 1st April, 1963. A notice proposing to assess the assessee's turnover for the year 1960-61 which had escaped assessment when the original order of assessment was made on 30th November, 1961, was issued to the assessee on 8th October, 1963. The assessee contended that the department had no right to issue such a notice after 31st March, 1963: *Held*, (1) that the right of the department to assess the escaped turnover and the liability of the assessee to be assessed in respect of that turnover, which was in existence when the General Sales Tax Act, 1125

was in force, was specifically preserved by the first portion of the proviso to section 61(1) of the Kerala General Sales Tax Act, 1963, and there was nothing in the remaining portion of that proviso which could in any way be construed as manifesting a "different intention" within the meaning of that expression as used in section 4 of the Interpretation and General Clauses Act, 1125; (2) that the proceedings to assess the escaped turnover were therefore validly initiated on 8th October, 1963, and as the assessment of the escaped turnover was made on 15th October, 1963, within three years next succeeding the year to which the tax related, it was within the time prescribed by rule 33(1) of the General Sales Tax Rules, 1950.—*ARYA VAIDYA PHARMACY LTD., PALGHAT v. STATE OF KERALA* [1968] 21 S.T.C. 357 (Ker.).

—See also *REVISION infra*.

MADHYA BHARAT

Notice of assessment given after prescribed time—Validity of assessment.—Where an assessment order was passed within three years, but the notice of assessment was given after three years: *Held*, that as the collection of the tax after assessment is not a part of assessment as such, the assessment must be taken as completed within the prescribed time.—*GOVINDRAM RAMPRASAD OF INDORE v. ASSESSING AUTHORITY (SALES TAX) AND ANOTHER* [1957] 8 S.T.C. 407 (M.P.).

Assessment—Dealer submitting return—Notice for assessment issued after three years—Whether barred by limitation.—Where the dealer has not filed the prescribed return of his turnover, the case is clearly one of "escaped assessment" and the proceedings for assessment must commence in respect of that turnover within the period prescribed by section 10 of the Madhya Bharat Sales Tax Act, 1950. Where, however, a return of turnover is filed by a dealer under section 7 of the Act, a proceeding for assessment commences and a notice under section 8(2) (e.g., to appear and produce evidence and document) is a step in the proceeding for completing the assessment. The Act contains no provision that the proceedings shall be completed within any fixed period; the assessing authority is therefore entitled to complete the proceeding properly commenced without any restriction as to time. A proceeding properly commenced by the filing of a return can be completed by the assessing authority at any time and the issue of a notice under section 8(2) does not attract the bar of section 10. The respondent, a dealer registered under the Madhya Bharat Sales Tax Act, 1950,

and also under the Central Sales Tax Act, 1956, had submitted its return of turnover for the four quarters of 1958-59, in respect of its inter-State sale transactions. After certain infructuous attempts made to tax the turnover, the assessing authority issued, under section 8(2) of the Act, a notice dated September 17, 1962, calling upon the respondent to show cause why the transactions included in the taxable turnover of the respondent be not taxed at the full rate. The respondent presented a petition under Article 226 of the Constitution contending that since the assessment was not completed within three years from the last day of the year of assessment as provided by section 10 the assessing authority had no power to continue the proceedings, and the High Court quashed the notice. On appeal to the Supreme Court: *Held*, reversing the decision of the High Court, that since the proceeding for assessment had already properly commenced when the respondent filed its return, that proceeding could be completed at any time, and the issue of a notice under section 8(2) did not attract the bar of section 10. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax* ([1964] 4 S.C.R. 436; 14 S.T.C. 976) explained. Decision of the Madhya Pradesh High Court reversed.—REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, INDORE *v.* MALWA VANASPATI AND CHEMICAL CO. LTD. [1968] 21 S.T.C. 431 (S.C.).

MADHYA PRADESH

Date for computing period of limitation—Date of issue of notice or date of satisfaction by Commissioner—Scope of section 11(5).—Section 11(5) of the C.P. and Berar Sales Tax Act, 1947, as amended by Act XX of 1953, makes it obligatory on the Commissioner to give the dealer a reasonable opportunity of being heard before he proceeds to assess him, and until he issues a notice to the dealer to show cause against the proposed assessment, he cannot be deemed to proceed to assess him. The notice is issued after the Commissioner is satisfied (i) that the dealer has been liable to pay tax in respect of any period, and (ii) that he has wilfully failed to apply for registration. But the date of his satisfaction is not the date for computing the period of limitation provided in the section. Unless the period for which the assessment has to be made ends within 3 years from the date when the Commissioner issues the notice, it cannot be the subject of assessment.—FIRM SHEONARAYAN MATADIN *v.* SALES TAX OFFICER, RAIPUR, AND ANOTHER [1956] 7 S.T.C. 623 (Nag.). [This decision was overruled by a Full Bench. See pages 672-673 *infra*.]

Issue of notices—Limitation—"During any period" and "such period"—Meanings of—Whether notices issued were barred by limitation.—The applicant was originally assessed to sales tax under the C.P. and Berar Sales Tax Act, 1947, in respect of six different periods between 1st June, 1947, to 18th October, 1952. Subsequently it was found that the applicant had been under-assessed and under section 11-A six notices were issued to him on 18th June, 1954, in respect of these six periods (1st June, 1947, to 12th November, 1947; 13th November, 1947, to 1st November, 1948; 2nd November, 1948, to 21st October, 1949; 22nd October, 1949, to 9th November, 1950; 10th November, 1950, to 30th October, 1951, and 31st October, 1951, to 18th October, 1952). The account books of the applicant were also seized and notice was issued to him to show cause why he should not be prosecuted under section 24 read with section 28: *Held*, (1) that although section 11-A inserted in the Act by the amending Act XX of 1953 was made retrospective from 1st June, 1947, the period referred to in the section is not the whole of the period commencing on the 1st June, 1947, and ending on the 18th October, 1952; the expression "such period" must be understood by reference to the expression "during any period", occurring in the earlier part of the section, which means the period for which the assessee had been previously assessed. Consequently the only notices which were within time and in order were the two notices issued in relation to the periods 10th November, 1950, to 30th October, 1951, and 31st October, 1951, to 18th October, 1952; (2) that a reassessment proceeding is one thing and the prosecution of the applicant for a breach of the provisions of the Sales Tax Act is quite another and therefore it would be open to the authorities to refer to and rely upon the books of account of the applicant, in order to properly reassess him, if the previous assessment had not been in order and there had been no testimonial compulsion and no violation of Article 20(3) of the Constitution.—BHOLARAM MURLIDHAR AGARWAL *v.* R. S. DESHMUKH AND OTHERS [1957] 8 S.T.C. 445 (Bom.).

"Escaped assessment", meaning of—Assessment of registered dealer for first time—Applicability of limitation provided in section 11-A.—Section 11-A of the C. P. and Berar Sales Tax Act, 1947, does not govern cases where the assessment is being made for the first time, either on a return being made or where no return is made and action is taken under section 11(4). The question of escaped assessment under section 11-A arises only if there is a final assessment under the Act and some

information is received subsequently by the Commissioner on the basis of which he feels that some turnover which ought to have been assessed was not so assessed. Where a return is pending for consideration or where no return has been filed there cannot be said to be a final assessment, and the stage for the application of section 11-A is not reached. For a registered dealer the Act itself is the notice and proceedings for assessment commence the moment the year is over and rule 19 begins to operate. When the registered dealer has filed his return the assessment proceedings are on the way, and if they are not attended to due to want of time or leisureliness on the part of the department it cannot be said that the process of first assessment is over. It is after the first assessment has been made and there is something which needs to be corrected or some assessment to be added to the assessment already made that section 11-A comes into the picture. Whenever such a contingency arises the rectification of the assessment for any of the four reasons mentioned in the section has to be made within three calendar years as stated in the section. Assessment proceedings are not limited by time in the Act and can be carried on beyond a year or even beyond three years and the limitation provided by section 11-A cannot be read back into section 11, sub-sections (1) to (4).—REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, NAGPUR REGION, AND OTHERS *v.* GHANSHYAMDAS CHHOTELAL [1958] 9 S.T.C. 179 (M.P.) reversed by Supreme Court in [1963] 14 S.T.C. 976. See next para.

Assessment—Limitation—“Escaped assessment”, meaning of—First assessment of registered dealer—When proceedings commence—Limitation under section 11A—Applicability.—Held, by the majority (DAS, ACTING C.J., SUBBA RAO, RAJAGOPALA AYYANGAR and MUDHOLKAR, JJ.)—The expression “escaped assessment” in section 11A of the C.P. and Berar Sales Tax Act, 1947, includes that of a turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore no assessment was made in respect thereof. A turnover cannot however be said to escape assessment if proceedings in respect of the first assessment are pending and no final order of assessment is made therein. The assessment proceedings must be held to be pending from the time the said proceedings are initiated until they are terminated by a final order of assessment. Proceedings duly initiated in time can be completed without time limit. In the case of a registered dealer the proceedings before the Commissioner starts

factually when a return is made or when a notice is issued to him either under section 10(3) or under section 11(2). The statutory obligation of the registered dealer to make a return within the prescribed time does not *proprio vigore* initiate the assessment proceedings before the Commissioner; but the proceedings will commence after the return is submitted and will continue till a final order of assessment is made in regard to the said return. The question of “escape of assessment” has to be considered on the basis that each quarter is a separate period for the assessment. As the unit of assessment is a quarter, that period cannot be further split up into months, weeks and days. RAGHUBAR DAYAL, J.—A turnover cannot be said to have “escaped assessment” if the proceedings for the assessment of the sales tax on that turnover be pending. If assessment proceedings are started within time, they can be finished at a later period. The statutory notice under section 10(1) and rule 19 initiate the assessment proceedings against a registered dealer at least from the date of the close of the quarter for which the turnover is to be furnished and tax is to be paid. The mere fact that the Sales Tax Officer cannot proceed against an unregistered dealer after the expiry of three years from the period the turnover in which was liable to tax, cannot lead to the conclusion that the Sales Tax Officer cannot take necessary steps to assess a registered dealer under sub-sections (2) and (4) of section 11 after the expiry of three years from the period whose turnover he proceeds to assess, for the reason that section 11 or any other provision of the Act does not lay down any such restriction on the Sales Tax Officer’s powers under these sub-sections. Such a power in the Sales Tax Officer does not contravene the provisions of Article 14 of the Constitution inasmuch as the registered dealer and the unregistered dealer belong to different classes. Decision of the High Court of Madhya Pradesh in *Regional Assistant Commissioner of Sales Tax, Nagpur Region, and Others v. Ghanshyamdass Chhotelal* [1958] (9 S.T.C. 179) reversed.—GHANSHYAMDAS *v.* REGIONAL ASSISTANT COMMISSIONER OF SALES TAX, NAGPUR, AND OTHERS [1963] 14 S.T.C. 976 (S.C.).

*Change of law—“Three calendar years” in section 11(5)—Meaning of—Bar of limitation removed by retrospective legislation—Validity of assessment.—*The expression “three calendar years” in section 11(5) of the C.P. and Berar Sales Tax Act, 1947, as amended by M.P. Act XX of 1953, means three calendar years calculated from the 1st January immediately succeeding the calendar year in which the assessment period expired. In

respect of the period from 29th January, 1949, to 18th August, 1949, a notice in Form XII was issued to the petitioner on 29th October, 1952, and an *ex parte* order of assessment was passed against him on 25th November, 1952. A penalty was also imposed on him under section 11(5) of the Act. The petitioner's appeal to the Assistant Commissioner of Sales Tax was dismissed on 30th September, 1954, and his second appeal was dismissed on 20th July, 1955. Act XX of 1953, which came into force on 1st December, 1953, omitted the words "from the commencement of this Act and thereafter within 12 months" in section 15 of the C.P. and Berar Sales Tax Act, 1947, and the amendment was given retrospective effect from 1st June, 1947. The petitioner however filed a petition under Article 226 of the Constitution and contended that the proceedings initiating the assessment were barred by limitation and that the imposition of the penalty was illegal: *Held*, (1) that the assessment made on the petitioner was not barred by limitation and was within the competence of the department and even if it was not so at the time when it was made, the assessment became valid once the bar of limitation was removed by retrospective legislation; (2) that as the notice was issued after the period of limitation then prescribed by the Act, no penalty could be imposed on the petitioner in view of the proviso to section 24 of Act XX of 1953. Exemption from liability to tax is not a substantive right and immunity from taxation by a bar of limitation can be removed by retrospective legislation by a competent Legislature. The liability to pay the tax is created by the charging section and that liability remains. All that the rule of limitation which is introduced in a taxing statute does is to take away the right of the department to claim the tax. If the law is at any time amended, then the rule of limitation disappears, more so, when the law itself makes the new rule of limitation applicable from the commencement of the parent Act. *Firm Sheonarayan Matadin v. Sales Tax Officer, Raipur, and Another* [1956] (7 S.T.C. 623) overruled. *Ramāhan Laxminarayan Agarwal v. The Assistant Sales Tax Officer, Akola* (M.P. No. 125 of 1955, dated 29th June, 1956) affirmed.—KANHAYYALAL SHIVSAHAY SHARMA v. DEPUTY COMMISSIONER OF SALES TAX, M.P., AND OTHERS [1958] 9 S.T.C. 503 (M.P.) (F.B.).

"Escaped assessment", meaning of—*Issug of notice under section 11(2), C.P. and Berar Act, after expiry of three years—Legality.*—A notice under sub-section (2) of section 11 of the C.P. and Berar Sales Tax Act, 1947, cannot be issued more than

three years after the expiry of the period for which it is proposed to make the assessment. But an assessment under sub-section (1) of section 11 can be made more than three years after the expiry of such period. It is however essential that assessment orders should be made as expeditiously as possible. In order that section 11-A should apply, it is not necessary that there should be an initial assessment and after that a discovery should be made that some turnover has escaped assessment. That section would equally apply if, in the first place, there was no assessment at all and it was found subsequently that the assessee was liable to tax. *Regional Assistant Commissioner of Sales Tax, Nagpur Region v. Ghanshyamdas Chhotelal* [1958] (9 S.T.C. 179) dissented from. *Commissioner of Income-tax, Bombay City v. Narsee Nagsee & Co.* [1957] (31 I.T.R. 164) followed.—BISÉSAR HOUSE v. STATE OF BOMBAY AND OTHERS [1958] 9 S.T.C. 654 (Bom.) (F.B.).

Assessment—Limitation—Notice under section 11(2) after expiry of three years—Whether can be issued.—An assessment under section 11(1) of C.P. and Berar Sales Tax Act, 1947, could be made more than three years after the expiry of the period for which it was proposed to make the assessment; but notice could not be issued under section 11(2) more than three years after the expiry of such period. *Bisesar House v. State of Bombay* [1958] (9 S.T.C. 654; 1958 N.L.J. 658) followed.—ASSISTANT COMMISSIONER OF SALES TAX, NAGPUR, AND OTHERS v. FIRM RAMKRISHNA RAMNATH [1960] 11 S.T.C. 807 (Bom.).

Assessment—Issue of notices—Limitation—Nature of proceedings under sections 10(3), 11(2) and 11(4)(a), C.P. and Berar Act—Notice under sections 10(3) and 11(4)(a)—Whether can be issued three years after expiry of assessment year.—There is a fundamental difference between the nature of the proceedings under sections 10(3) and 11(4)(a) of the C.P. and Berar Sales Tax Act, 1947, and the proceedings under section 11(2) of the Act. The proceedings under section 10(3) are proceedings for the purpose of levying a penalty upon the dealer for failure to register or to comply with the requirements of a notice under section 10(1). The proceedings under section 11(4)(a) are taken *in terrorem* and the dealer is penalised by a best judgment assessment in default of compliance. Whereas the proceedings under both the provisions of law are analogous to proceedings for the purpose of imposing a penalty, the proceedings under section 11-A are taken for assessment for the first time. In the C.P. and Berar Sales Tax Act, 1947, no period of

limitation is laid down within which proceedings under section 10(3) or 11(4)(a) should be taken and therefore a notice in Form XII under section 10(3) read with section 11(4)(a) can be issued beyond three years after the expiry of the assessment period. *Bisesar House v. State of Bombay and Others* [1958] (9 S.T.C. 654) distinguished.—*MESSRS RAMKRISHNA RAMNATH v. SALES TAX OFFICER, NAGPUR, AND OTHERS* [1960] 11 S.T.C. 811 (Bom.).

Assessment—Limitation—Notice under section 11(2), C. P. and Berar Act—Whether can be issued more than three years after expiry of assessment period—Whether amendment to section 11-A has taken away effect of Full Bench decision in Bisesar House case.—In view of the amendment to section 11-A of the Central Provinces and Berar Sales Tax Act, 1947, by section 6 of the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959, the Full Bench decision in *Bisesar House v. State of Bombay* [1958] (9 S.T.C. 654) does not hold good in so far as it lays down that a notice under section 11(2) of the Central Provinces and Berar Sales Tax Act, 1947, cannot be issued more than three years after the expiry of the period for which it is proposed to make assessment. The amendment affected proceedings pending at the date of the amendment and also proceedings commenced subsequently. Therefore after the amendment of section 11-A, a notice under section 11(2) of the Act can be issued more than three years after the expiry of the period for which it is proposed to make the assessment.—*SHAH RAMCHAND GOVINDJI & Co. v. G. G. NERKAR, SALES TAX OFFICER* [1960] 11 S.T.C. 837 (Bom.) (F.B.).

—See also *DAURAM v. STATE OF MADHYA PRADESH AND OTHERS* [1962] 13 S.T.C. 562 (M.P.).

Assessment—Limitation—Unregistered dealer—"Period" in section 11(5), C. P. and Berar Act—Meaning of—Whether a quarter for which registered dealer is required to furnish return—Construction of taxing statutes.—The word "period" in section 11(5) of the Central Provinces and Berar Sales Tax Act, 1947, means the whole period during which the dealer has been liable to pay tax under the Act and has nevertheless wilfully failed to apply for registration. It is not to be construed as meaning a quarter for which, under rule 19 of the Central Provinces and Berar Sales Tax Rules, 1947, every registered dealer is required to furnish a return. Unless the context so requires, a word cannot be construed on the basis of rules made by a subordinate authority. Section 11(5), which

is enacted against evasion of tax, ought not to be narrowly construed in order to facilitate evasion. A taxing statute cannot be extended in operation beyond what the words used in the statute express but, within the limits set by the words, it is the duty of the courts so to construe statutes as to suppress the mischief against which they are directed and to advance the remedy which they are intended to provide. *Madan Lal Arora v. Excise and Taxation Officer, Amritsar* [1961] (12 S.T.C. 387) distinguished. *The Great Fingall Consolidated Ltd. v. Sheehan* (3 Com. L.R. 176) referred to. *State of Orissa and Another v. Chakobhai Ghelabhai & Co.* [1960] (11 S.T.C. 716) relied on.—*BATTULAL v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1962] 13 S.T.C. 893 (M.P.).

Limitation—Repeal and re-enactment of statutes—Assessment under repealed Act—Limitation for re-assessment.—The proviso to section 19(1) of the Madhya Pradesh General Sales Tax Act, 1958, applies not only to assessments made before its commencement but also to assessments made after its commencement in which proceedings were initiated earlier. The latter assessments are within the ambit of section 19(1) by virtue of part (i) of the proviso to section 52(1) of the 1958 Act. On 10th March, 1959, the Sales Tax Officer issued to the petitioner a notice in Form XII for the period 3rd November, 1956, to 23rd October, 1957, and on 23rd May, 1959, he was assessed to tax under section 11(4)(a) of the Central Provinces and Berar Sales Tax Act, 1947. On 23rd October, 1962, a notice under section 19(1) of the Madhya Pradesh General Sales Tax Act, 1958, was issued to the petitioner for assessing to tax his sales for the same period which had escaped assessment: *Held*, that since the original assessment was expressly made under the 1947 Act, the period for reassessment was, notwithstanding the repeal, the one prescribed by the repealed Act, namely, three calendar years from the expiry of the period 3rd November, 1956, to 23rd October, 1957. That being so, the proceedings initiated on 23rd October, 1962, for taxing the sales made during that period, which had escaped assessment, must be regarded as out of time.—*HANUMANPRASAD v. SALES TAX OFFICER, CIRCLE No. 1, JABALPUR* [1963] 14 S.T.C. 507 (M.P.). affirmed in [1967] 19 S.T.C. 87 (S.C.). See below :

Repeal and re-enactment of statutes—Limitation—Assessment order passed after new Act came into force—Reassessment—Limitation—Whether period prescribed under new Act or repealed Act.—Where in respect of a period governed by the Central

Provinces and Berar Sales Tax Act, 1947, the respondent filed its return under that Act and a notice in Form XII was issued to the respondent on March 10, 1959, and the turnover was assessed by an order dated May 23, 1959, but in the meantime, the Madhya Pradesh General Sales Tax Act, 1959, came into force on April 1, 1959: *Held*, that the period of limitation for reopening the assessment dated May 23, 1959, on the ground of turnover escaping assessment was three years as prescribed under section 11A(1) of the Act of 1947 and not five years as prescribed in the main part of section 19 of the Act of 1959. Decision of the Madhya Pradesh High Court in *Hanumanprasad v. Sales Tax Officer, Circle No. 1, Jabalpur* [1963] (14 S.T.C. 507) affirmed.—*THE SALES TAX OFFICER, CIRCLE 1, JABALPUR v. HANUMAN PRASAD* [1967] 19 S.T.C. 87 (S.C.).

Assessment—Limitation—Validity of notices and assessment—“Period” in section 11(5) and “ordinarily” in rule 32—Meanings of.—Under section 11(5) of the C. P. and Berar Sales Tax Act, 1947, the issue of separate notices for several periods is not necessary and if only one notice is issued for several periods the assessment made for each period separately will be legal. The word “period” as used in section 11(5) cannot be construed in the same sense in which it has been used in section 11-A. Whereas in section 11-A the meaning of the word has to be taken with reference to the unit of assessment, that is a “quarter”, in section 11(5) it must be understood with reference to the period during which a dealer being liable to pay tax has wilfully failed to apply for registration. Therefore the word “period” in section 11(5) covers the whole period during which a dealer being liable to pay tax has wilfully failed to apply for registration and it does not mean the quarter for which return is to be filed under rule 19. The decision in *Battulal v. Commissioner of Sales Tax, Madhya Pradesh* [1962] (13 S.T.C. 893) does not run counter to the pronouncement of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax* [1963] (14 S.T.C. 976). The word “ordinarily” in rule 32 of the C. P. and Berar Sales Tax Rules, 1947, is an indication that the giving of thirty days’ time is not a mandatory provision. The assessee having failed to apply for registration as a dealer under section 8 of the C.P. and Berar Sales Tax Act, 1947, was served with a notice in Form XII under section 11(5) in respect of the period from 19th January, 1950, to 26th October, 1953. When the assessee appeared before the officer on 15th April, 1955, it was informed by an order passed

by the officer on that day that it would be assessed for the period from 19th January, 1950, to 26th November, 1954. The assessee was also directed to produce the account books for the above period. The assessee never produced any account books even after obtaining several adjournments for that purpose. On 29th December, 1955, the officer assessed the assessee for the period from 19th January, 1950, to 26th November, 1954. On the question whether the notice and assessment were valid: *Held*, that the notice given to the assessee and the assessment made for the period from 19th January, 1950, to 26th November, 1954, were legal and valid.—*L. J. PATEL & Co. v. COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE* [1964] 15 S.T.C. 18 (M.P.).

Assessment—Limitation—Period of limitation enlarged by retrospective amendment of provision—Right to take action—“Period” in section 11(5)—Meaning of.—Ordinarily an Act does not have retrospective operation on substantive rights which have become fixed before the commencement of the Act; but the Legislature may enact laws affecting substantive rights by making the laws expressly retrospective or by using language which has that result. When the provisions of an Act are made retrospective by the use of express words or by necessary intendment, then the closed transactions or substantive rights, which would have continued undisturbed but for the retrospective operation, are affected and reopened. Section 8(v) of the Madhya Pradesh Sales Tax (Amendment) Act, 1953, deleted the words “from the commencement of this Act and thereafter within twelve months” occurring in section 11(5) and this amendment was given retrospective effect from 1st June, 1947. Therefore although limitation originally prescribed in section 11(5) for taking action in respect of a particular period has already expired, the taxing authority has power to take action under section 11(5) if the period of three calendar years “from the expiry of such period” has not yet run out. The word “period” occurring in section 11(5) covers the whole period during which a dealer being liable to pay tax had wilfully failed to apply for registration and it does not mean the quarter for which return is to be filed. The decision in *Battulal v. Commissioner of Sales Tax, Madhya Pradesh* [1962] (13 S.T.C. 893) in no way runs counter to the decision of the Supreme Court in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax* [1963] (14 S.T.C. 976). Under the C.P. and Berar Sales Tax Act, 1947, an assessment can be made on a firm after its

dissolution in respect of transactions effected by it while it was in existence. The amount of tax determined in such an assessment would be a State debt recoverable from and out of partnership assets even after dissolution and in the hands of the partners or otherwise. Under section 4(2) the liability to pay tax arises "with effect from the date of the expiry of two months after the month" up to the end of which the dealer's turnover calculated from a date specified in sub-section (2-a) exceeds the limits specified in sub-section (5). It is therefore not correct to say that under the Act the tax liability, in the nature of a liability for payment of a debt, does not arise until the taxable turnover is actually determined and the tax amount is fixed in assessment proceedings. *Kanhayyalal v. Deputy Commissioner of Sales Tax* [1958] (9 S.T.C. 503; A.I.R. 1958 M.P. 211) followed. *Jullundur Vegetable Syndicate v. The Punjab State* [1962] (13 S.T.C. 251) dissented from.—GHANSHYAMDAS v. SALES TAX OFFICER, DURG, M. P., AND FIVE OTHERS [1964] 15 S.T.C. 128 (M.P.).

Turnover escaping assessment—Period of limitation for assessment of unregistered dealers and no period for registered dealers—Provisions whether discriminatory—Opportunity of being heard—Whether notice condition precedent.—The appellant, a registered dealer whose "year" for the purposes of the C.P. and Berar Sales Tax Act, 1947, was the year ending October 31, did not submit returns of its turnover for any period after April 30, 1952. On September 13, 1955, the assessing authority issued a notice, *inter alia*, under section 11(4)(a) for failure to furnish the return for the period January 1 to December 31, 1953, requiring attendance and production of books and documents on September 22, 1955. Similar notices were issued on October 27, 1955, and July 7, 1956, for the periods January 1 to December 31, 1954, and January 1 to December 31, 1955, respectively. The appellant took time repeatedly for submitting an explanation. In 1958 fresh notices were issued on a transfer of the case, whereupon the appellant objected to the validity of these notices on the ground that its assessment year was not the calendar year as mentioned in the notices but the year ending October 31. Another set of notices was issued on July 8, 1959. The appellant filed writ petitions challenging that the notices issued in 1959 were barred by time. The petitions having been dismissed the appellant appealed to the Supreme Court: *Held*, by WANCHOO, C.J., MITTER and HEGDE, JJ. (BACHAWAT and RAMASWAMI, JJ., dissenting):—(i) that the knowledge of the fact

that the appellant had not submitted its quarterly returns as well as the treasury challans constituted an information to the assessing authority from which he could be satisfied that the turnovers for the relevant periods had escaped assessment; and, therefore, the appellant's case fell both under section 11(4)(a) and section 11A(1). It was open to the assessing authority to proceed against the appellant under any one of those two sections. Since the appellant was proceeded against under section 11(4)(a) the appellant could not have the benefit of the period of limitation prescribed under section 11A(1). Section 11(4)(a) became a discriminatory provision in view of section 11A(3). It offended Article 14 of the Constitution and had to be struck down. Both section 11(4)(a) and section 11A(1) concerned themselves with escaped assessments. The classification made between registered and unregistered dealers had no nexus with that object and was not a reasonable classification; (ii) that a notice under section 11(4)(a) or section 11A(1) was not a condition precedent for initiating proceedings under those provisions. All that the sections prescribed was that before taking proceedings against a dealer under those provisions he should be given a reasonable opportunity of being heard. The period of 30 days prescribed by rule 32 of the rules framed under the Act was not mandatory. When the appellant received the notices of 1955 and 1956 it did not object to their validity but merely asked for time which was given. The fact that only nine days were given by the notices for submitting an explanation could not have prejudiced the appellant. The notices were to be read together and so read they gave the appellant the reasonable opportunity contemplated by section 11(4)(a) and section 11A(1); (iii) that the assessing authority had no jurisdiction to assess the turnover of the appellant for the period May 1 to October 31, 1952, since no notice was issued within three years, and for the quarter November 1, 1952 to January 31, 1953, which formed a unit since no notice was given in respect of that quarter; (iv) that, since every escapement of assessment coming within the scope of section 11(4)(a) was also an escapement of assessment under section 11A(1) and a notice issued under section 11(4)(a) would be a valid notice in respect of a proceeding under section 11A(1), the notices issued in 1955 and 1956 were valid notices in respect of the period from February 1, 1953 to October 31, 1955, though the notices were not in respect of particular quarters and did not coincide with the assessment year of the appellant. They were to be read together and they were valid notices

so far as they related to the period February 1, 1953 to October 31, 1955. Per BACHAWAT and RAMASWAMI, JJ. (dissenting):—Having regard to the special provisions of section 11(4) read with section 11A(3), the power under section 11A(1) as interpreted in *Ghanshyamdas's* case [1963] 14 S.T.C. 976 (S.C.) to assess turnover which escaped assessment by reason of non-filing of returns, must be confined to cases of unregistered dealers. Cases of registered dealers falling within section 11(4) are excluded from the purview of section 11A(1). The Act deals with registered dealers differently in many ways. The classification and differential treatment of registered and unregistered dealers are based on substantial differences having reasonable relation to the object of the Act. The bar of limitation in the case of an unregistered dealer and the absence of such a bar in the case of a registered dealer cannot be regarded as unjust or discriminatory. There is no compulsion on the Legislature to prescribe a period of limitation in every case. Section 11(4) is not violative of Article 14.—ANANDJI HARIDAS AND Co. (P.) LTD. v. S. P. KUSHARE, SALES TAX OFFICER, NAGPUR, AND OTHERS [1968] 21 S.T.C. 326 (S.C.).

Assessment—Escaped turnover—Issue of notices—Limitation—Provisions of sections 11(2) and 11A—Whether cover different fields—Whether discriminatory.—While section 11(2) of the C.P. and Berar Sales Tax Act, 1947, deals with pending proceedings, section 11A concerns itself with matters which are not pending. The sections do not cover the same field, nor do they overlap. A notice under section 11(2) does not initiate any proceeding but is merely a step in a pending proceeding, and the fact that there is no period of limitation for the issue of a notice under section 11(2) while, on the other hand, a period of limitation is prescribed under section 11A does not amount to discrimination. Neither section 11(2) nor section 11A(3), to the extent to which it provides that nothing in sub-sections (1) and (2) of section 11A shall apply to a notice issued under section 11(2) is, therefore, violative of Article 14 of the Constitution.—MADHYA PRADESH INDUSTRIES LTD. v. STATE OF MAHARASHTRA AND OTHERS [1968] 22 S.T.C. 400 (S.C.).

MADRAS

Assessment of escaped turnover—Limitation—Scope of rules 14(2) and 17, Madras General Sales Tax Rules—Revisional powers—Whether can be exercised in cases where rule 17 applies.—Held, (1) that rule 14(2) of the Madras General Sales Tax Rules, 1939, is *intra vires* the rule-making power

of the Provincial Government under section 19 of the Act; (2) that the revisional powers under rule 14(2) cannot be exercised in cases to which rule 17 applies; (3) that rule 17 applies only to cases of escaped turnover. In a general sense both rule 14(2) as well as rule 17(1) serve a common purpose, *viz.*, to gather revenue which has improperly escaped; but while rule 14(2) is directed to the correction of improper or illegal assessment orders which have levied less or more tax than justified, rule 17(1) lays emphasis on *escaped* turnover. The distinction between the two provisions might be expressed by saying that rule 14(2) deals with escaped assessments and rule 17(1) with escaped turnovers, notwithstanding that the latter also would mean that a lesser amount of tax has been levied. So understood the two provisions would be completely reconcilable and the two jurisdictions—to revise assessments and to reopen them—would each be assigned to the proper authority. The “escape” that serves as the foundation of the jurisdiction to reopen an assessment is that of “turnover” and not an assessment. “Turnover” *escapes* when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberate concealment on the part of the assessee, or because of want of care on the part of the officer the turnover though in the books has not been taken notice of. This would be the natural and normal meaning of the expression “turnover which has escaped” in rule 17(1). There is no real analogy between rule 17(1) of the Madras General Sales Tax Rules, 1939, and the provisions of section 34 of the Indian Income-tax Act, 1922.—THE STATE OF MADRAS v. LOUIS DREYFUS AND COMPANY LTD. [1955] 6 S.T.C. 318 (Mad.).

Assessment where no return is submitted—Scope of rule 17(1).—Where an assessee did not file at any time a return of his turnover for a year, whether due to omission or deliberate concealment on his part, rule 17 of the Madras General Sales Tax Rules, 1939, applies and an assessment has therefore to be made within the period of limitation mentioned in that rule. *State of Madras v. Louis Dreyfus and Co., Ltd.* [1955] (6 S.T.C. 318) followed.—THE STATE OF MADRAS v. S. BALU CHETTIAR AND OTHERS [1956] 7 S.T.C. 519 (Mad.).

Assessment based on return voluntarily filed after expiry of period prescribed by section—Validity of assessment.—There is nothing in the Madras General Sales Tax Act, 1939, or in the rules framed thereunder prescribing the period within which assessment proceedings once validly started should be completed. The assessee did not file

any return of his turnover for 1950-51 within the time prescribed. After other proceedings were taken against him, he voluntarily submitted on 20th February, 1954, a return of his turnover for that period which was accepted by the assessing authorities and he was assessed to tax on 11th March, 1954. The question was whether the assessment fell within the scope of rule 17(1) of the Madras General Sales Tax Rules, 1939, and was barred by the period of limitation prescribed by that rule: *Held*, that as the assessee had submitted return voluntarily, rule 17(1) did not apply and the assessment was therefore proper.—*STATE OF MADRAS v. M. P. IBRAHIM KUNHI AND OTHERS* [1956] 7 S.T.C. 617 (Mad.).

Assessment of escaped turnover—Change of law.—The amendment made to rule 17(1), Madras General Sales Tax Rules, 1939, by the notification dated 11th June, 1953, had, either expressly or by necessary implication, no retroactivity and therefore it could not affect any final assessment already made. Consequently any assessment which has become final before 11th June, 1953, could only be revised under the original rule within two years next succeeding that to which the tax or licence fee related.—*THE GOVERNMENT OF ANDHRA v. K. RAJAIAH AND Co.* [1957] 8 S.T.C. 164 (A.P.).

Assessment of escaped turnover—Change of law—Law of limitation, whether procedural law—Period of limitation enlarged before right to assess is barred—Applicability of new law.—Rule 17(1) of the Madras General Sales Tax Rules, 1939, which provided for a two year period of limitation within which the assessing authority could assess the escaped turnover, was amended on 11th June, 1953, when the period of limitation was enlarged to three years next succeeding that to which the tax related. The date of assessment of the petitioner for the assessment year ending 31st March, 1953, was 10th February, 1954, and the escaped turnover was assessed on 20th March, 1956. The petitioner contended that he had acquired a vested right to the two year period of limitation and therefore the assessment of escaped turnover was barred by limitation: *Held*, that the law of limitation being procedural law its provisions applied to causes of action which arose before their enactment and as in the present case before the right of the assessing authority was barred the period of limitation prescribed by law was enlarged, it was the amended law that determined the liability of the petitioner. Consequently the assessment of escaped turnover was not barred by limitation. *East Asiatic Company (India) Ltd. v. The State of Madras* [1956] (7 S.T.C. 299; A.I.R.

1956 Mad. 168) dissented from. *Muhamad Husain Nachiar v. Commissioner of Income-tax, Madras* [1956] (29 I.T.R. 848; (1956) 2 M.L.J. 139) and *Ramanathan Chettiar v. Kandappa Gounder* [(1950) 2 M.L.J. 624] followed.—*N. K. C. SYED MOHAMMED RAVOOTHER v. THE DEPUTY COMMERCIAL TAX OFFICER, TIRUKOILUR* [1958] 9 S.T.C. 1 (Mad.).

Assessment of escaped turnover—Validity of rule 17—Period of limitation enlarged before right to assess is barred—Applicability of new law.—Rule 17 of the Madras General Sales Tax Rules, 1939, which vests jurisdiction in the assessing authority to reassess escaped turnover is not *ultra vires* on the ground of unconstitutional delegation of legislative power. There is also no inconsistency between the rule and the provisions enacted in the body of the Act. Where rule 17 of the Madras General Sales Tax Rules, 1939, prescribing a period of two years for assessing escaped turnover was amended in 1953 by substituting a period of three years for two years: *Held*, that the provisions of the amended rule applied to cause of action which arose before the amendment and where the period of limitation prescribed by law was enlarged before the right of the assessing authority was barred, it was the amended law that determined the liability of the assessee. *N. K. C. Syed Mohammed Ravoothar v. The Deputy Commercial Tax Officer, Tirukoilur* [1958] (9 S.T.C. 1) relied on. *The Government of Andhra (Now Andhra Pradesh) v. K. Rajaiah and Co.* [1957] (8 S.T.C. 164) distinguished.—*PADARTHI VENKATESWARA RAO AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, KAKINADA, AND ANOTHER* [1959] 10 S.T.C. 162 (A.P.).

Assessment for preceding year—Whether should be completed in succeeding year.—Rule 13(5) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, contemplates and expects that an assessment for the preceding year should ordinarily be made in the succeeding year, but it cannot be implied therefrom an immutable period of limitation excluding the jurisdiction of the assessing authority to finalise an assessment after the close of the succeeding year. It prescribes only a procedure for finally assessing under a single order and it cannot be read as delimiting the period within which proceedings duly initiated under the rules should be terminated. Neither the charging section (section 3) nor section 9, which prescribes the procedure to be followed by the assessing authority, expressly or by necessary implication lays down a period of limitation or excludes the jurisdiction of the assessing authority

to finalise the assessment after the succeeding year.—*M. V. BHADRAIAH SETTI v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1959] 10 S.T.C. 222 (A.P.).

Assessment of escaped turnover—Limitation—Service of notice within two years following year of assessment—Validity of reassessment.—Under rule 17 of the Madras General Sales Tax Rules, 1939, the assessing authority can assess within the year of assessment itself or within two years next succeeding that to which the tax related a turnover which has escaped assessment. The latter period mentioned in the rule is the limit within which the assessing authority should take proceedings for assessing the escaped turnover. The former time limit is mentioned only to emphasise the power of the assessing authority to take reassessment proceedings even during the year of assessment itself, when that authority comes to know of the escape of assessment after an assessment has been completed under section 9. If therefore a notice under rule 17 is issued within two years following the year of assessment, the proceedings for reassessment are validly initiated.—*C. K. N. S. NAGARAJAN AND OTHERS v. THE STATE OF MADRAS* [1959] 10 S.T.C. 605 (Mad.).

Reassessment—Escaped assessment and escaped turnover—Applicability of rules 17(1) and 14(2)—Limitation—When revisional powers of Deputy Commissioner can be exercised—Scope of rule 14-A.—The petitioner-firm with its head office in Madhya Pradesh and a branch inside the State purchased groundnut seeds and groundnut oil from local merchants and agriculturists and exported the same to Madhya Pradesh. For the assessment year 1951-52 the petitioner did not include in its return the purchases made through the local dealers and it was assessed to tax on a certain sum which did not include such purchases. For the same year treating the petitioner as a non-resident principal, three local dealers were assessed to sales tax under section 14-A as agents of the petitioner on the local purchases made on behalf of the petitioner. These dealers contested their liability. The Tribunal held that the petitioner was a resident dealer as it had a branch within the State and therefore the local dealers were not liable as agents of a non-resident principal but steps should be taken to revise the assessment orders passed against the petitioner. Pursuant to the above direction, the Deputy Commissioner of Commercial Taxes issued notices on 12th June, 1955, and assessed the petitioner to additional tax on the turnovers included in the assessments of the local dealers. The petitioner

appealed but the Tribunal confirmed the additional assessments. On revision it was contended on behalf of the petitioner that the Deputy Commissioner had no jurisdiction to act under section 12(2) of the Madras General Sales Tax Act, 1939, as the assessments related to "escaped turnovers" and the only provision under which such escaped turnovers could be assessed was rule 17(1) of the Madras General Sales Tax Rules, 1939, and that the period of limitation prescribed thereunder having expired by the date the Deputy Commissioner issued notices to the petitioner, the assessments were barred by time: *Held*, (1) that though in a general sense both rule 14(2) and rule 17(1) served a common purpose, viz., to gather revenue which had improperly escaped, rule 14(2) dealt with escaped assessments and rule 17(1) with escaped turnovers and the revisional powers under rule 14(2) could not be exercised in cases to which rule 17 applied; (2) that as the petitioner did not submit any return with regard to the disputed turnover, it was the default of the petitioner that led to the escape of the turnover from assessment to the tax and therefore the case fell within the ambit of rule 17(1) and did not come within the scope of rule 14(2); (3) that when rule 14(2) spoke of "the record of any order passed" it referred to the record of the order passed upon the petitioner, and the record of the assessment of the local dealers could in no sense be the record of the assessments made on the petitioner; (4) that the Deputy Commissioner of Commercial Taxes was not one of those included in the hierarchy of officials empowered to function as an "assessing authority". He was only constituted as an appellate or revisional authority under section 12 read with rule 13. Rule 14-A empowering the Deputy Commissioner to determine the correct amount of tax payable contemplated a case where the tax had already been determined by the initial assessing authority. As, in the present case, the initial assessing authority did not include the disputed turnover in the assessment made on the petitioner, the Deputy Commissioner was not competent to include that turnover in the assessment of the petitioner for the first time under rule 14-A.—*BERAR OIL INDUSTRIES, AKOLA, AT ADONI v. THE STATE OF ANDHRA (NOW ANDHRA PRADESH)* [1961] 12 S.T.C. 797 (A.P.).

Reassessment—Limitation—Period of limitation enlarged before right to reassess is barred—Applicability of new law.—The assessee was assessed to sales tax on a turnover for the assessment year 1954-55 on 1st December, 1955, but on 31st October, 1958, the assessing authority issued a

notice to the assessee to assess a turnover which had escaped assessment and then levied an additional tax. The assessee contended that as the assessment was made under the Madras General Sales Tax Act, 1939, the reassessment could be made only within 3 years from the assessment year under rule 17(1) of the Madras General Sales Tax Rules, 1939, and section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, which fixed a longer period of limitation, viz., 4 years, was inapplicable: *Held*, that where the period of limitation prescribed by law was enlarged before the right of the assessing authority to reassess was barred, it is the amended law that determined the liability of the assessee. Therefore the assessing authority was well within his right in making the additional assessment within 4 years next succeeding the assessment year. An assessment could not be said to have become final the moment it was made. It became final only after the period prescribed for the filing of appeal or revision or for making additional assessment had expired.—*MUNAGA PERAIAH v. THE STATE OF ANDHRA PRADESH* [1962] 13 S.T.C. 26 (A.P.).

Assessment of escaped turnover—When limitation commences.—Under rule 17 of the Madras General Sales Tax Rules, 1939, limitation for assessing a turnover which has escaped assessment commences only from the end of the assessment year and not from the commencement thereof. Rule 17 is not in any way repugnant to section 19(2)(f) of the Madras General Sales Tax Act, 1939, and therefore it is not in excess of the rule-making power of the Government.—*TALUPULA NARAYANASWAMY, In re* [1962] 13 S.T.C. 595 (A.P.).

Assessment of escaped turnover—Limitation—Presumption regarding official acts.—A notice under rule 17 of the Madras General Sales Tax Rules, 1939, for assessing an escaped turnover for the year 1953-54 was issued on 9th March, 1957, and served on the assessee on 15th March, 1957. The assessee was asked to send his explanation by 20th March, 1957, but the assessee submitted no explanation. The assessing authority thereupon made an assessment. The assessment order was dated 20th March, 1957, and the notice of demand was served on the assessee on 6th April, 1957. The assessee contended that 6th April, 1957, should be regarded as the actual date on which the order of assessment was made, there being no guarantee that it was in fact made on the 20th March, 1957, and therefore the assessment was beyond the period of three years from the close of the

assessment year and was barred by limitation: *Held*, that in view of the normal presumption that official acts were properly done, it should be regarded that the assessment was in fact made on the date on which it purported to have been made and therefore the assessment was not barred by limitation.—*M. VEERABADRA KONAR v. THE STATE OF MADRAS* [1962] 13 S.T.C. 556 (Mad.).

Repeal and re-enactment of statutes—Assessment and appeal under 1939 Act and subsequent revision of assessment by original authority to give effect to appellate order—Assessment of escaped turnover by Assessment Commercial Tax Officer after repeal of 1939 Act—Legality—Scope of section 61(1), 1959 Act.—An assessment order was made on 15th April, 1958, under the provisions of the Madras General Sales Tax Act, 1939. On appeal the appellate authority revised the order on 3rd October, 1958, and this was given effect to by the original authority passing a fresh order dated 30th October, 1958. On 14th February, 1962, the Assessment Commercial Tax Officer, in purported exercise of his power under section 16(1) of the Madras General Sales Tax Act, 1959, called upon the assessee to show cause why the turnover should not be enhanced as having escaped assessment and actually passed an order dated 28th March, 1962, including a certain amount of turnover as having escaped assessment. The question was whether the order dated 28th March, 1962, was without jurisdiction: *Held*, (1) that by virtue of section 61 of the Madras General Sales Tax Act, 1959, the assessee acquired a right or a liability to be assessed in accordance with the provisions of the 1939 Act; (2) that under the 1939 Act, the Commercial Tax Officer alone, as the appellate authority by revising his earlier order, could bring to tax the escaped turnover. There was nothing in the proviso to section 61(1) which permitted application to such a case of section 16, which vested the power to tax escaped assessment in the original authority even in case of orders revised by the appellate authority. Under the 1959 Act, the jurisdiction of the Commercial Tax Officer in this matter under the old provisions was not continued. In the circumstances the Assessment Commercial Tax Officer had no jurisdiction as an original authority to make the order which he did; (3) that the Madras General Sales Tax (Amendment) Act (10 of 1963) would not affect this position. *Sales Tax Officer v. Hanuman Prasad* [1967] (19 S.T.C. 87) referred to.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADRAS DIVISION v. R. V. RAMIAH CHETTY AND COMPANY* [1968] 22 S.T.C. 217 (Mad.).

MYSORE

Limitation—Assessment order set aside on appeal—Subsequent filing of return by assessee—Officer determining taxable turnover on the basis of "best of judgment"—Whether assessment barred by limitation.—An assessment order dated 26th October, 1953, for the assessment year 1952-53 was set aside on appeal by the Deputy Commissioner of Commercial Taxes and the case was remanded to the Assessing Authority for fresh enquiry and disposal by order dated 12th November, 1954. Subsequent to that the assessee filed a return of turnover for that year and that return was received by the Assessing Authority on 24th February, 1956. The Assessing Authority however did not rely on that return but determined the net taxable turnover on the basis of "best of judgment" by his order dated 26th August, 1957. The question arose whether the Assessing Authority's right to assess the assessee for the assessment year 1952-53 was barred by rule 34(1) of the Mysore Sales Tax Rules, 1948: *Held*, (1) that as the return made by the assessee was not accepted by the Assessing Authority and the assessment was made on the basis of best of judgment, the ratio of the decision in *State of Madras v. M. P. Ibrahim Kunhi and Others* [1956] (7 S.T.C. 617) was inapplicable to the facts of the case; (2) that the order dated 26th August, 1957, related to an escaped assessment and the same having been made after the period fixed in rule 34(1) was unsustainable. *State of Madras v. M. P. Ibrahim Kunhi and Others* [1956] (7 S.T.C. 617; A.I.R. 1957 Mad. 627) distinguished. *Commissioner of Income-tax, Bombay City v. Narsee Nagsee & Co., Bombay* [1960] (40 I.T.R. 307; A.I.R. 1960 S.C. 1232) applied. *Maharaj Kumar Kamal Singh v. Commissioner of Income-tax* [1959] (35 I.T.R. 1; A.I.R. 1959 S.C. 257) referred to.—*K. S. SUBBARAYAPPA & SONS v. THE STATE OF MYSORE* [1962] 13 S.T.C. 873 (Mys.).

Assessment—Limitation—Submission of return—Assessment whether can be completed beyond period prescribed for assessment of escaped turnover.—No limitation is prescribed under the Mysore Sales Tax Act, 1948, for making an assessment on a dealer who has submitted a return. Until a final order of assessment is made in regard to the return it cannot be said that any turnover of the dealer has escaped assessment within the meaning of rule 34(1) of the Mysore Sales Tax Rules, 1948. Where the appellant filed quarterly returns of its turnover for the period April 1, 1955, to March 31, 1956, and the Commercial Tax Officer estimated the turnover but on appeal the Deputy Commissioner

remanded the case with a direction that the Commercial Tax Officer should properly scrutinise the accounts and, if the accounts were not maintained correctly, he should estimate the turnover on proper material, and, thereafter, on October 19, 1958 (i.e., after the expiry of the period prescribed by rule 34(1) of the Mysore Sales Tax Rules, 1948, for assessing escaped turnovers), the Commercial Tax Officer estimated the total taxable turnover of the appellant and assessed the sales tax: *Held accordingly*, that the order of assessment dated October 19, 1958, was not barred by limitation. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* [1963] (14 S.T.C. 976) relied on. Decision of the Mysore High Court affirmed.—*M. V. NARASAPPA v. COMMERCIAL TAX OFFICER, KOLAR, AND ANOTHER* [1968] 22 S.T.C. 518 (S.C.).

ORISSA

Limitation under section 12(7) relating to re-assessment—Whether applies to revision under section 23(3).—Section 12(7) of the Orissa Sales Tax Act, 1947, which provides that a reassessment of escaped turnover or under-assessed turnover should be made within thirty-six months of the end of the period for which the tax is payable, applies also to revisions by the Collector under section 23(3) and therefore the Collector cannot make a reassessment in exercise of his power of revision under section 23(3) after the expiry of thirty-six months. The word "Collector" in section 12(7) is not different from the Collector in section 23(3) and it includes both the original assessing officer and the revising authority. Rule 54 of the Orissa Sales Tax Rules, 1947, cannot give any greater power to the Collector exercising revisional authority than what is granted under the Act itself. *Gajo Ram Basant Ram and Another v. The State of Bihar* [1956] (7 S.T.C. 248) distinguished.—*BASUDEB HOTA AND OTHERS v. STATE OF ORISSA* [1958] 9 S.T.C. 663 (Ori.).

Limitation—Reassessment—Whether should be made within three years.—In respect of a reassessment under sub-section (7) of section 12 of the Orissa Sales Tax Act, 1947, prior to its amendment in 1958, if a return was called for within 36 months after the expiry of the period for which the turnover had escaped assessment any subsequent time taken by the Collector in passing an order of reassessment was immaterial and would not make his order time-barred. The period of limitation provided in section 12(6) that an order of assessment could not be passed later than 36 months from the expiry of such period did not apply to a reassessment under

sub-section (7). The ambiguity, if any, on that point was removed by the Orissa Sales Tax (Amendment) Act (1 of 1955) which added a third proviso to sub-section (6) providing that the period of limitation in the second proviso did not apply to assessments under sub-section (7). This is an amendment dealing with the law of limitation which is a procedural law and it will therefore apply to pending proceedings also. *Syed Mohammed Ravoothar v. Deputy Commercial Tax Officer, Tirukoilur* [1958] (9 S.T.C. 1) referred to.—*COMMISSIONER OF SALES TAX, ORISSA v. NILEI SAHOO* [1961] 12 S.T.C. 728 (Ori.).

Initiation of assessment proceedings—Preliminary objection that proceedings are barred by limitation—Duty of officer to decide objection judicially and record proper order.—*ORISSA HIDES TRADING COMPANY v. SALES TAX OFFICER, RAIPUR* [1964] 15 S.T.C. 36 (M.P.).

Order passed in revision—Whether an order assessing the amount of tax due—Applicability of limitation provided in second proviso to section 12(6), Orissa Sales Tax Act (14 of 1947).—*Held*, by the Court (DAS GUPTA and RAJAGOPALA AYYANGAR, JJ.; SARKAR, J., dissenting) that the second proviso to section 12(6) of the Orissa Sales Tax Act, 1947, which lays down that no order “assessing the amount of tax shall be passed after the lapse of 36 months from the expiry of the period” is in substance not a real proviso to that section but an independent legislative provision of the Act. It is not in terms limited only to orders of assessment made under section 12 but on its language applies to and governs any order assessing the amount of tax which would include an assessment under any provision of the Act besides section 12. Therefore even if an order of assessment made in exercise of the powers of revision under section 23 be held not to be an order under section 12 the limitation provided by the proviso will be applicable to such an assessment. But any order of assessment made by the revising authority under section 23(3) is an order passed under section 12 as well as section 23(3) and therefore the period of limitation prescribed in the second proviso to section 12(6) applies to such an assessment. DAS GUPTA and RAJAGOPALA AYYANGAR, JJ.—The power of revision granted by section 23(3) is a distinct and separate power from the power to assess under section 12(7) after calling for a return in case of under-assessment or escaped assessment. The mere fact that in a particular case the revising authority has by a fresh order of assessment made the dealer liable for tax in respect of which he can be said to have been under-assessed or to have escaped assessment

does not make the two powers one and the same. Section 12(7) does not therefore include the re-assessment made by the revising authority under section 23(3). SARKAR, J.—An order made under section 23(3) cannot properly be called an order “assessing the amount of tax due” as contemplated by the Act at all and therefore the limitation laid down in the second proviso to section 12(6) does not apply to such an order. The Act does not contemplate an order which is not made under section 12 as an order assessing the amount of tax due. *Gajo Ram v. The State of Bihar* [1956] (7 S.T.C. 248) not approved.—*THE STATE OF ORISSA v. DEBAKI DEBI AND OTHERS* [1964] 15 S.T.C. 153 (S.C.).

PUNJAB

Assessment—Limitation—Notice issued under section 11(1), Pepsu Ordinance—Repeal of Ordinance and Punjab Act brought into force before expiry of period of limitation—Applicability of sub-sections (3) and (4) of section 11, Punjab Act—Whether assessment barred by limitation.—*NATHU RAM NOHAR CHAND v. STATE OF PUNJAB* [1963] 14 S.T.C. 311 (Punj.), pages 86-87 *supra*.

Best judgment assessment—For failure to comply with terms of notice—Limitation—No power to make best judgment assessment after expiry of three years from end of each quarter—East Punjab General Sales Tax Act (46 of 1948), Sec. 11.—MADAN LAL ARORA v. THE EXCISE AND TAXATION OFFICER, AMRITSAR [1961] 12 S.T.C. 387 (S.C.), page 121 *supra*.

Assessment—Limitation—Scope of sub-sections (2), (3), (4), (5) and (6), Punjab Act—Whether best judgment assessment should be completed within three years—“Proceed to assess” and “assess”—Meanings of—Period of limitation in sub-sections (4), (5) and (6)—Whether can be imported into sub-section (3).—*Held*, by the majority (MAHAJAN and CAPOOR, JJ.; PANDIT, J., dissenting).—A best judgment assessment under sub-section (4), (5) or (6) of section 11 of the East Punjab General Sales Tax Act, 1948, has to be completed within a period of 3 years from the last date on which the return had to be filed. The use of the expression “proceed to assess” in sub-sections (4), (5) and (6) does not connote anything different from the word “assess”. MAHAJAN, J.—The period of limitation provided in sub-sections (4), (5) and (6) has to be imported into sub-section (3), and therefore an assessment under sub-section (3) must also be completed within three years from the last date on which the return could be filed under the Act. Even if it be assumed that the period of limitation under sub-sections (4),

(5) and (6) of section 11 is provided for taking a step towards assessment, the issuance of a notice calling upon the dealer to produce accounts or to be present for hearing or to satisfy the Assessing Authority as to the correctness of the return are not steps towards assessment. PANDIT, J.—There is no need for importing the limitation of 3 years for completing the assessment under sub-section (3) which the Legislature in its own wisdom did not think it proper to incorporate in the statute. The expression “proceed to assess” in sub-sections (4), (5) and (6) is not equivalent to the word “assess” and does not mean the passing of the final order of assessment. All that is required is that the Assessing Authority must initiate the assessment proceedings within a period of 3 years and it is not necessary that he should actually pass the final order of assessment within that period. When a notice is issued to the registered dealer under sub-section (2) and he does not comply with the terms thereof, then the Assessing Authority would make up his mind to proceed to assess to the best of his judgment and would make a note to this effect on the file. That would be the stage when it could be said that the Assessing Authority had proceeded so. No further notice is to be given to the registered dealer by the Assessing Authority before proceeding to assess to the best of his judgment. The question whether a registered dealer has or has not failed to comply with the terms of a notice issued under sub-section (2) and the case is covered by sub-section (3) or sub-section (4) of section 11 will depend on the facts of each case. The condition precedent for making an assessment under sub-section (5) is that the dealer must be given a reasonable opportunity of being heard and for this purpose, the Assessing Authority should send a notice to him to appear on a particular date, on which the authority proposes to proceed to assess to the best of his judgment. If the notice is served, then on that day, whether the dealer appears or not, the Assessing Authority would, in law, be deemed to have proceeded to assess to the best of his judgment. MAHAJAN, J.—The bar of limitation is a bar affecting jurisdiction and therefore the existence of alternative remedy is no bar to the issue of a writ under Article 226. The Statement of Objects and Reasons cannot be referred to for the purpose of construing a statute. It is a fundamental rule that all taxes can be lawfully evaded. It is only where the evasion is unlawful that the rule that a taxing statute must be interpreted in favour of the subject and against the State cannot be applied. Where the evasion is because of the bar of limitation, it cannot be said to be unlawful. PANDIT, J.

—A statute is never supposed to use words without a meaning. If possible, meaning should be given to every word. *Madan Lal Arora v. The Excise and Taxation Officer, Amritsar* [1961] (12 S.T.C. 387) and *Bisesar House v. State of Bombay and Others* [1958] (9 S.T.C. 654) followed. *Avtar Singh Ranjit Singh v. Assessing Authority, Ludhiana* [1963] (65 Punj. L.R. 422) and *Jiwan Singh and Sons v. Excise and Taxation Officer (Assessing Authority), Jullundur District* [1960] (11 S.T.C. 540) overruled. *Nathu Ram Nohar Chand v. State of Punjab* [1963] (14 S.T.C. 311) approved.—*RAMESHWAR LAL SARUP CHAND v. SHRI U. S. NAURATH, EXCISE AND TAXATION OFFICER, ASSESSING AUTHORITY, AMRITSAR, AND ANOTHER* [1964] 15 S.T.C. 932 (Punj.) (F.B.).

Assessment—Limitation—Period of limitation extended before right to assess is barred—Whether assessment can be made within extended period.—Where before the right to assess an assessee had become barred by time under section 11(4) of the Punjab General Sales Tax Act, 1948, section 5 of the Punjab General Sales Tax (Amendment) Act, 1963, extended the period by another year: *Held*, that the extended period would apply to the assessment of the assessee: *Held further*, that the period provided in section 11(4) was to be counted from the end of each quarter and not from any point in the middle of the quarter.—*BHAGWAN HOTEL v. THE ASSESSING AUTHORITY, ROHTAK, AND ANOTHER* [1964] 15 S.T.C. 319 (Punj.).

Best judgment assessment—Limitation—When officer can be said to “proceed to assess” under section 11(4), East Punjab General Sales Tax Act (46 of 1948).—Whenever a question arises as to whether or not an Assessing Authority has proceeded to assess to the best of his judgment within the meaning of section 11(4) of the East Punjab General Sales Tax Act, 1948, it is for that authority to show that it has so proceeded within the period prescribed by the statute. As to at what point of time, he did actually proceed to so assess would have to be determined on the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear-cut test applicable to all cases. There must, however, be some definite act or step taken from which it can be clearly ascertained that from that point of time the Assessing Authority has proceeded to assess to the best of his judgment and the starting point of this process must be within the period of 3 years as provided in section 11(4). [The Court declined to assent to the submission that after the initial notice in Form S. T. XIV it was open to the Assessing Authority to proceed to make a best judgment

assessment without any limitation in point of time.]—*JAGAT RAM OM PARKASH v. EXCISE AND TAXATION OFFICER, ASSESSING AUTHORITY, AMRITSAR* [1965] 16 S.T.C. 107 (Punj.) (F.B.).

Best judgment assessment—Reassessment—Limitation—Proceedings started within time—Issue of second notice after limitation consequent on allowing appeal against best judgment assessment—Whether assessment barred by limitation.—The principle enunciated by the Full Bench in *Jagat Ram Om Parkash v. Excise and Taxation Officer, Assessing Authority, Amritsar* [1965] (16 S.T.C. 107) for the construction of section 11(4) of the East Punjab General Sales Tax Act, 1948, applies also to the case of reassessment under section 11-A. The petitioner-firm assessed to sales tax for the year 1958-59 on the basis of the turnover showed in its return, was served with a notice in Form XIX on 13th March, 1961, and a best judgment assessment was made on it on 26th June, 1961. The petitioner appealed on the ground that adequate opportunity was not afforded to it for presenting its case and this appeal was allowed on 17th April, 1963. Thereafter a fresh notice was issued to the petitioner. The petitioner contended that the proceedings for reassessment on the basis of "best judgment" having been taken three years after 31st March, 1959, were hit by sections 11(4) and 11-A: *Held*, that the proceedings for reassessment were not invalid on the ground of limitation because they had actually started on 13th March, 1961, within a period of three years and the issue of the second notice, after the appeal, was only a continuation of the proceedings for reassessment.—*RAM DHARI MALL RAJ KUMAR v. THE STATE OF PUNJAB AND OTHERS* [1965] 16 S.T.C. 173 (Punj.).

Best judgment assessment—Limitation—When officer can be said to "proceed to assess" under section 11(5), East Punjab General Sales Tax Act.—The amendment effected by para. 5 of the Punjab General Sales Tax (Amendment) Ordinance (2 of 1963) and by section 5 of the Punjab General Sales Tax (Amendment) Act (2 of 1963) does not have retrospective effect and any assessments which had become barred by time before 10th January, 1963, could not be effected after that day by virtue of the amendment. The three years referred to in section 11(5) of the East Punjab General Sales Tax Act, 1948, within which the Assessing Authority can proceed to make a best judgment assessment, have to be counted from the end of each quarter in respect of which the return had to be filed. The time of three years does not terminate with the issue of a

notice in Form S.T. XIV by the Assessing Authority to the dealer and it is not open to the Assessing Authority to proceed to make a best judgment assessment without any limitation in point of time after issuing such a notice within three years. The expression "proceed to assess to the best of his judgment" does not however connote the actual framing of the final assessment order. As to at what point of time the Assessing Authority actually proceeded to assess to the best of judgment, it would have to be determined on the facts and circumstances of each case in its own setting. There must be some definite act or step taken by the Assessing Authority from which it can be clearly ascertained that from that point of time the Assessing Authority had proceeded to assess to the best of his judgment. Whenever a question arises as to whether or not an Assessing Authority has proceeded to make a best judgment assessment, it is for that authority to show that it has so proceeded within the period prescribed by the statute. [*Held*, on the facts of the case, that the respondents had not discharged the burden placed on them to show that the Assessing Authority, which passed the order under section 11(5), had proceeded to assess on best judgment basis within the period mentioned in the sub-section.] *The Punjab Commerce Bank Ltd. v. Shri Brij Lal Mahandiratta* [1955] (I.L.R. 1955 Punj. 297) relied on. *Jagat Ram Om Parkash v. Excise and Taxation Officer, Assessing Authority, Amritsar* [1965] (16 S.T.C. 107) (F.B.) and *Madan Lal Arora v. Excise and Taxation Officer, Amritsar* [1961] (12 S.T.C. 387) followed. *Shivram Poddar v. Income-tax Officer, Central Circle II, Calcutta, and Another* [1964] (A.I.R. 1964 S.C. 1095) and *Rameshwar Lal Sarup Chand v. Shri U. S. Naurath and Another* [1964] (15 S.T.C. 932) referred to.—*FARIDABAD INDUSTRIAL AND QUARRYING COMPANY v. THE EXCISE AND TAXATION OFFICER (ASSESSING AUTHORITY) AND ANOTHER* [1966] 18 S.T.C. 101 (Punj.).

Best judgment assessment—Difference between assessment under sections 11(3) and 11(4), Punjab General Sales Tax Act, 1948—Limitation.—Assessments under section 11(3) and section 11(4) of the Punjab General Sales Tax Act, 1948, are both "best judgment assessments" and the difference between them would be of degree only. An assessment under section 11(3) would not be so summary as an assessment under section 11(4). A question of limitation would arise only in the case of a "best judgment assessment" under section 11(4) and not under section 11(3).—*BUDH RAM NARAIN DASS v. THE STATE OF PUNJAB* [1966] 18 S.T.C. 437 (Punj.).

Assessment—Limitation—Returns filed and notice for enquiry served within three years—Assessment order passed beyond three years of end of assessment year—Whether barred by limitation—Assessing Authority stating that assessment was made to the best of his judgment—Effect.—For the assessment year 1955-56 the respondent-firm filed quarterly returns of turnover under the Punjab General Sales Tax Act, 1948. Though the returns were filed beyond time no objection was taken by the Assessing Authority. Not satisfied with these returns the Assessing Authority served a notice under section 11(2) of the Act on the respondent on January 11, 1957, before the expiry of 3 years from the dates of filing of the returns. On July 5, 1960, he examined a partner of the firm. The Assessing Authority disbelieved the accounts produced by the partner and passed an assessment order on August 11, 1960, adding sales of Rs. 4 lakhs to the gross turnover. The respondent thereupon filed a writ petition and the High Court held that the order was an assessment on best judgment basis under section 11(4) and as it was made after three years after the close of the assessment year it was without jurisdiction. On appeal to the Supreme Court: *Held*, (i) that the mere fact that the Assessing Authority mentioned that he made the order on the best judgment basis cannot be conclusive, for, merely calling it as a best judgment assessment, the order did not become one; (ii) that *prima facie* none of the conditions specified in sub-sections (4) to (6) of section 11 existed in the present case and therefore though the Assessing Authority stated that he had to assess the firm to the best of his judgment, the order could not be said to be either under sub-section (4) or sub-section (5) or sub-section (6); (iii) that assessment proceedings commence, in the case of a registered dealer, either when he furnishes a return or when a notice is issued to him under section 11(2) and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently, even after the expiry of the prescribed period, no question of limitation would arise; (iv) that since, in the present case, the filing of the returns and the service of the notice under section 11(2) were within the prescribed time, the assessment order, though made after the expiry of three years from the end of the assessment year, was within jurisdiction and valid. Decision of the Punjab High Court reversed. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* [1963] (14 S.T.C. 976; [1964] 4 S.C.R. 436) applied.—THE STATE OF PUNJAB AND OTHERS v. TARA CHAND LAJPAT RAI [1967] 19 S.T.C. 493 (S.C.).

Assessment—Limitation—Notice for appearance served within three years—Whether order may be passed after three years.—The respondent was a registered dealer under the Punjab General Sales Tax Act, 1948. In respect of the assessment of the respondent to sales tax for the year 1957-58 notice under Form S.T. XIV requiring the respondent to appear was served on January 2, 1960. The case was adjourned from time to time as the respondent did not appear. Ultimately the respondent was given a final opportunity for appearance on June 10, 1961. Before the assessment proceedings could be completed the respondent filed a writ petition for a writ directing the appellants not to proceed against the respondent under section 11 of the Act. The High Court allowed the petition. On appeal to the Supreme Court: *Held*, that the proceedings for assessment taken against the respondent were legally valid because the notice was served and the proceedings were initiated in time within the period prescribed under section 11(5) and the petition was therefore liable to be dismissed. *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* ([1964] 4 S.C.R. 436; 14 S.T.C. 976) and *State of Punjab and Others v. Tara Chand Lajpat Rai* [1967] (19 S.T.C. 493) followed.—THE STATE OF PUNJAB AND ANOTHER v. MURLIDHAR MAHABIR PARSHAD [1968] 21 S.T.C. 29 (S.C.).

Best judgment assessment—Limitation—Registered and unregistered dealers—When assessment proceedings commence—Whether assessment should be completed within three years.—Where the assessee, registered as dealers under the Punjab General Sales Tax Act, 1948, filed their returns before the expiry of three years from the end of the periods to which the returns related, proceedings for assessment of sales tax came into existence and best judgment assessments could be made even after the expiry of three years prescribed by section 11(4), (5) or (6) of the Act. Where the assessee was not a registered dealer and did not file his return voluntarily, notice for best judgment assessment issued in Form S.T. XIV prescribed under the Rules framed under the Act within the period of three years to which the assessment related resulted in the initiation of proceedings against the assessee and such proceeding could be completed even after the expiry of three years. *The State of Punjab and Others v. Tara Chand Lajpat Rai* [1967] (19 S.T.C. 493), *The State of Punjab and Another v. Murlidhar Mahabir Parshad* [1968] (21 S.T.C. 29) and *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur* [1963] (14 S.T.C. 976; [1964] 4 S.C.R. 436) followed.—THE EXCISE AND

TAXATION OFFICER, PUNJAB, AND ANOTHER v. VISHESHER NATH KASHMIRI LAL [1968] 22 S.T.C. 331 (S.C.).

Best judgment assessment—No appeal against assessment—Assessment set aside by Commissioner under section 21 and officer directed to make fresh assessment—Proceedings initiated by officer after remand—Whether fresh proceedings—Limitation—Applicability of section 11-A.—An assessee assessed to sales tax on a best judgment basis did not prefer an appeal against the assessment but paid the tax assessed. Subsequently the Commissioner in exercise of his *suo motu* power of revision under section 21 of the Punjab General Sales Tax Act, 1948, set aside the assessment and directed the Sales Tax Officer to make a fresh assessment according to law: *Held*, that the order interfered with by the Commissioner was a final order of assessment and therefore the proceedings initiated by the Sales Tax Officer after the remand by the Commissioner were in the nature of proceedings for the purpose of assessing the turnover which had escaped assessment and must have been initiated within the period of four years specified in section 11-A of the Act.—SHRI OM PARKASH SETH v. THE ASSESSING AUTHORITY, AMRITSAR, AND ANOTHER [1964] 15 S.T.C. 530 (Punj.). On appeal this decision was affirmed.

Best judgment assessment—Reassessment—Limitation—Assessment set aside by Commissioner under section 21 and officer directed to make fresh assessment—Period of limitation for proceedings initiated by officer after remand.—Proceedings for fresh assessment taken by an assessing authority in pursuance of the directions made by the Commissioner while disposing of a revision petition under section 21(1) of the Punjab General Sales Tax Act, 1948, setting aside the order of assessment and ordering the assessing authority to make a fresh assessment in accordance with law are governed by the period of limitation prescribed in sub-sections (4), (5) and (6) of section 11 or section 11-A of the Act. It is open to the Commissioner to redetermine the quantum of turnover liable to tax while exercising revisional powers but once he decides to direct the assessing authority to make a reassessment in accordance with law, the proceedings for reassessment would be fresh proceedings governed by the period of limitation prescribed in section 11-A. Decision of MAHAJAN, J., in *Shri Om Parkash Seth v. The Assessing Authority, Amritsar, and Another* [1964] (15 S.T.C. 530) affirmed. *Jaipuria Brothers Limited v. The State of Uttar Pradesh and Others* [1965] (16 S.T.C. 494) followed.—THE ASSESSING AUTHORITY, AMRITSAR, AND ANOTHER v. SHRI OM

PARKASH SETH [1969] 24 S.T.C. 282 (Punj. & Har.) (F.B.).

UTTAR PRADESH

Right to make assessment after expiry of three years.—Under section 21 of the U. P. Sales Tax Act, 1948, the Assessing Authority has been given a right at any time within three years from the expiry of the year of assessment to make an assessment on turnover of a dealer that has escaped assessment. Under the section it is not enough if a notice is issued within that period but assessment itself should be made within that period. The Sales Tax Officer has, therefore, no jurisdiction to make any assessment under that section after the expiry of three years. For the assessment year 1948-49 a best judgment assessment was made on the petitioner under section 21 of the U. P. Sales Tax Act, 1948, on 31st March 1952. The petitioner appealed and the Judge (Appeals) allowed the appeal and set aside the assessment. The Commissioner thereupon preferred a revision. The Judge (Revisions) set aside both the appellate order and the assessment order and remanded the case for a fresh assessment after proper scrutiny of the account books. On 10th June, 1955, the Sales Tax Officer issued a notice to the petitioner and proceeded to make an assessment. The petitioner filed a petition under Article 226 of the Constitution: *Held*, that as the Judge (Revisions) had set aside the assessment order and had directed a fresh assessment to be made, any assessment that should be made would be a fresh assessment under section 21 and this could only be done within a period of three years after the expiry of the year of assessment and as that time had long expired the Sales Tax Officer had no jurisdiction to make any assessment under section 21. [The question whether the officer had a right to proceed with that assessment under section 7 was not decided on the ground that it did not arise for determination.]—JAIPURIA BROTHERS LTD. v. THE SALES TAX OFFICER AND ANOTHER [1956] 7 S.T.C. 64 (All.).

Reassessment—Whether limitation applies to assessment made under orders of appellate or revising authority.—The limitation of time provided in section 21 of the U. P. Sales Tax Act, 1948, prior to its amendment by the Uttar Pradesh Sales Tax (Amendment) Act, 1956, is with respect to the assessment by the Sales Tax Officer in the first instance on the turnover which has escaped assessment and is not for any reassessment or fresh assessment under the directions of the appellate or revising authority.—THE STATE OF U. P. v. JAIPURIA BROTHERS [1961] 12 S.T.C.

248 (All.) affirmed on different grounds in [1965] 16 S.T.C. 494 (S.C.). See below :—

Reassessment—Limitation—Scope of section 21, U.P. Act—Assessment under section 21—Appeal and subsequent revision—Revising authority setting aside appellate order and directing fresh assessment—Right to make assessment after expiry of three years—Retrospective amendment of section during pendency of proceedings in High Court—Applicability of amended section.—Under section 21 of the U.P. Sales Tax Act, 1948, before it was amended by Act 19 of 1956, there could be no order of assessment or reassessment either by the Sales Tax Officer *suo motu* or pursuant to the direction of the appellate or revising authority after the expiry of the period of three years prescribed by the statute; but under section 21 as amended, the power may be exercised by the Sales Tax Officer *suo motu* within four years from assessment or reassessment. That power could be exercised under the first proviso within a further period of one year if a notice under subsection (2) was served within four years of the end of the year of assessment and without limit of time when it was made in consequence of, or to give effect to, any finding or direction contained in an order of the appellate or revisional authority or under an order of the High Court under section 11. In respect of an assessment of an escaped turnover for the assessment year 1948-49, under the U.P. Sales Tax Act, 1948, the revising authority set aside the appellate order and directed the Sales Tax Officer to make a fresh assessment. Accordingly on 23rd July, 1955, the Sales Tax Officer directed the assessee to produce his account books. The assessee contended that as the original assessment under section 21 was set aside by the Judge (Revisions) Sales Tax, no proceeding in connection with that assessment was pending and as more than three years had elapsed since the end of the year of assessment, reassessment was barred. The Sales Tax Officer rejected this contention. On an application under Article 226 of the Constitution the High Court held that the period of limitation prescribed by section 21 applied only to the order which the assessing authority made *suo motu* and that if he was directed to reassess by an order of the appellate or revisional authority under sections 9 and 10 that period had no application: *Held*, (1) that section 21 before it was amended did not provide expressly or impliedly that the period within which reassessment might be made applied only to those cases where the Sales Tax Officer acted on his own initiative and not pursuant to the directions of the appellate or

revisional authority; (2) that section 21 as amended during the pendency of the proceedings in the High Court was retrospective from the date on which the principal Act came into operation and the amended section must be deemed to have been on the statute book on the date on which the revising authority passed his order. Therefore under the amended section the assessing authority had the power to proceed with the assessment of the assessee for the year 1948-49. Decision of the Allahabad High Court in *The State of U.P. v. Jaipuria Brothers* [1961] (12 S.T.C. 248) affirmed on different grounds.—*JAIPURIA BROTHERS LIMITED v. THE STATE OF UTTAR PRADESH AND OTHERS* [1965] 16 S.T.C. 494 (S.C.).

Turnover escaping assessment—Scope of section 21, U.P. Sales Tax Act (15 of 1948)—Limitation—Fresh information for making assessment—Whether necessary.—Under section 21 of the U.P. Sales Tax Act, 1948, a Sales Tax Officer is empowered to make an assessment if for any reason the whole or any part of the turnover has escaped assessment. This implies that even if on account of an inadvertent mistake the assessing authority does not assess a dealer on a turnover or a part of it, it would be a case of "escaped assessment" within the meaning of that section. There is nothing in the language of section 21 which limits the power of the assessing authority to assess a dealer only when the dealer conceals a turnover of sales liable to be taxed in his return. For an assessment under section 21 the law does not require that there should be any fresh information on the basis of which an assessment can legally be made under that section. As the effect of section 15 of the U.P. Sales Tax (Amendment) Act (19 of 1956) is that section 21 as substituted should always be deemed to have been in the principal Act, any order of fresh assessment passed under section 21 in pursuance of a direction contained in an order under section 9 will be a good and valid order even though it was passed beyond the expiry of four years from the assessment year in question.—*SUWA LAL POORAN MAL v. COMMISSIONER OF SALES TAX, U.P., LUCKNOW* [1963] 14 S.T.C. 456 (All.).

Notice of demand—Whether should be issued before expiry of period of limitation—Best judgment assessment—Whether legal.—*MOTA SINGH DALIP SINGH v. COMMISSIONER OF SALES TAX* [1963] 14 S.T.C. 620 (All.) (page 87 *supra*).

Filing of forms

Rule prescribing time-limit for filing C Forms and E-1 Forms—Validity.—See pages 223-226 *supra*.

Rectification of mistake

Limitation for rectification of mistake.—See RECTIFICATION OF MISTAKE *infra*.

Refund

Refund—Whether can be granted after period of limitation to person who is no party in High Court's decision.—The appellant was assessed to sales tax for the three years 1946-47, 1947-48 and 1948-49 on 20th July, 1948, 26th April, 1950, and 21st February, 1951, respectively. During every one of the three years the sale price of imported goods sold by the appellant was below Rs. 5,000 and the turnover was below Rs. 25,000. On 28th July, 1951, the appellant applied for refund of the entire tax paid by him for all the three periods relying on the High Court's judgment in *Ayodhyaprasad v. The State* [1951] (2 S.T.C. 44) delivered on 12th September, 1950. The Commissioner rejected the application for refund for all the three periods. None of the three orders of assessment formed the subject of appeal, revision, review or reference: *Held*, (1) that the claim for refund for the first two periods was time-barred under section 13 and the Commissioner was therefore justified in rejecting that claim; (2) that the claim lodged for the third period was within time and deserved examination on merits. Such examination should take into account the legal position created by the High Court's decision.—*SHEIKH GAUHAH SHEIKH NAZIR OF BALAGHAT v. THE STATE* [1952] 3 S.T.C. 331. This decision was overruled in [1966] 17 S.T.C. 343 (S.C.).

Refund—Payment of tax on inter-State sales—Subsequent decision of Supreme Court that no tax is payable—Refund under section 14, Orissa Sales Tax Act—Whether can be granted—Limitation.—*ORIENT PAPER MILLS LTD. v. THE STATE OF ORISSA AND OTHERS* [1957] 8 S.T.C. 749 (Ori.). The decision in this case was reversed by the Supreme Court in [1961] 12 S.T.C. 357.

Refund—Limitation—Tax voluntarily paid before passing of order of assessment—Petition under Article 226 claiming refund—Applicability of limitation in section 14, Orissa Sales Tax Act, 1947.—For the purpose of claiming refund either under the proviso to section 14 of the Orissa Sales Tax Act, 1947, or under the main portion of that section there must be an order of assessment passed by the Sales Tax Authorities. There is no provision in the Act or the Rules under which a right of refund can be claimed where a tax is voluntarily paid before an order of assessment is

passed. This right, if any, will come under the general law subject to the rules of limitation as laid down in the Limitation Act. The High Court's jurisdiction under Article 226 in such cases would arise only for enforcing a statutory obligation on the Sales Tax Officer. Where there is no order of assessment and there is no right to be enforced against the Sales Tax Officer, under the provisions of the Orissa Sales Tax Act, a petition under Article 226 is not maintainable and the petitioner must be left to pursue his normal remedies for the purpose of enforcing his right of refund, if any.—*WILLIAM JACKS & Co. v. STATE OF ORISSA* [1964] 15 S.T.C. 855 (Ori.).

Petition under Article 226, Constitution of India for refund of tax paid under mistake of law—Liability of Government to refund—Limitation.—See MISTAKE OF LAW *infra*.

Suit for refund of tax collected illegally—Limitation.—See SUIT *infra*.

Suit

Suit for refund of tax paid by mistake—Maintainability—Limitation.—See SUIT *infra*.

MACHINERY

Machinery—Meaning of—“Cottage basin” used in silk industry—Whether machinery.—“Cottage basin” used in the silk industry for spinning and reeling silk is a “machinery” within the meaning of that term in item 20 of the Second Schedule to the Mysore Sales Tax Act, 1957. Definition of the term “machinery” in *Corporation of Calcutta v. Cossipore Municipality* [1922] (A.L.R. 1922 P.C. 27) applied.—*THE STATE OF MYSORE v. M. N. V. RAO* [1964] 15 S.T.C. 540 (Mys.).

—Humidifiers used by textile mills—Whether machinery used in the manufacture of cloth.—Humidifiers used by cotton textile mills in order to maintain certain humidity for the purpose of increasing the strength of yarn, avoiding breakages of yarn and improving the quality of yarn, are essential to the modern textile industry. They are therefore machinery used in the manufacture of cloth and fall within entry 15 of Schedule C to the Bombay Sales Tax Act, 1959, and not within entry 20 of Schedule C.—*INDUSTRIAL MACHINERY MANUFACTURERS PVT. LTD. v. THE STATE OF GUJARAT* [1965] 16 S.T.C. 380 (Guj.).

—Washers and leather belts—Whether leather goods or spare parts of machinery.—The question whether washers and leather belts are or are not

spare parts or component parts of machinery has to be decided having regard to the meaning of the word "machinery" and of the words "spare parts" and "component parts" and the nature and type of the articles. Where the assessee claimed that washers and leather belts were spare parts or component parts of machinery, he should produce the necessary material before the taxing authorities to show that having regard to the definition of machinery in *Corporation of Calcutta v. Chairman of the Cossipore and Chitpore Municipality* (A.I.R. 1922 P.C. 27) and to the type and the nature of the washers and leather belts sold, they could not but be regarded as spare or component parts of machinery.—*THE STATE OF MADHYA PRADESH v. R. R. CONTRACTOR & Co.* [1962] 13 S.T.C. 208 (M.P.).

—*Article found to be iron scrap—Whether machinery falling under item 23, First Schedule, Madras General Sales Tax Act.*—When an article has been found to be iron scrap it will fall under item 4 of the Second Schedule of the Madras General Sales Tax Act, 1959. It will not be machinery or a part of it, or hardware or iron and steel falling within item 23 of the First Schedule to the Act.—*DEPUTY COMMISSIONER OF COMMERCIAL TAXES, MADURAI DIVISION, MADURAI v. R. Y. NADAR AND Co.* [1966] 17 S.T.C. 312 (Mad.).

Handloom—Whether machinery—Parts of handlooms—Whether fall under entry 20, Schedule II, Mysore Sales Tax Act, 1957.—Handlooms are machinery and parts thereof sold in the course of business are liable to sales tax as falling within entry 20 of Schedule II of the Mysore Sales Tax Act, 1957. If some of the items are mere accessories they would be outside the ambit of entry 20, but liable to tax only under sub-section (1) of section 5. Machinery is a contrivance whereby several things are put together to work in such a way that force may be applied at a most convenient point in a most convenient way to get a particular work or an item of work done or to produce a specific article or manufactured goods. The mode or the manner in which power is fed into it or force is applied, need not and should not make any difference. The source of power can also be either human or animal. *The State of Mysore v. M. N. V. Rao* [1964] (15 S.T.C. 540; 1964 Kar. L.J. 101) and *Corporation of Calcutta v. Cossipore Municipality* [1922] (A.I.R. 1922 P.C. 27) relied on.—*D. B. BHANDARI v. STATE OF MYSORE* [1967] 20 S.T.C. 25 (Mys.).

Company carrying on business of manufacture and sale of chemicals.—Liability to sales tax on sale of machinery.—*THE MINING AND CHEMICAL*
STD—87

INDUSTRIES v. COMMISSIONER OF SALES TAX [1963] 14 S.T.C. 391 (All.).

—Sale of old machines as part of programme of modernising machinery—Liability to sales tax.—*AMBICA MILLS LTD. AND OTHERS v. THE STATE OF GUJARAT AND ANOTHER* [1964] 15 S.T.C. 367 (Guj.) affirmed by Supreme Court in [1967] 19 S.T.C. 1, at page 12.

Company carrying on business of manufacture of cloth—Sale of old machinery and replacement by new one—Liability to sales tax.—*COMMISSIONER OF SALES TAX v. HINDOOSTAN SPINNING & WEAVING Co. LTD.* [1964] 15 S.T.C. 69 (Mah.).

Company carrying on business of manufacture and sale of machinery—Purchase of arc furnaces for its manufacturing business and sale of them when found unsuitable—Sale turnover—Whether liable to sales tax.—*K. C. P. LIMITED v. THE STATE OF MADRAS* [1965] 16 S.T.C. 156 (Mad.) affirmed in [1969] 23 S.T.C. 173 (S.C.).

Tractor—Whether agricultural machinery.—See *AGRAWAL BROTHERS v. COMMISSIONER OF SALES TAX, MADHYA PRADESH* [1965] 16 S.T.C. 860 (M.P.) and *PASHABHAI PATEL & Co. (P.) LTD. v. COLLECTOR OF SALES TAX, MAHARASHTRA STATE* [1964] 15 S.T.C. 32 (Bom.).

MADHYA BHARAT SALES TAX ACT

Madhya Bharat Sales Tax Act (XXX of 1950)
—Jurisdiction of officer—Transfer of case from one officer to another—Order of Commissioner—Legality—Mere order of transfer—Whether violates any rights of assessee—Scope of rule 46—General order of transfer—Validity—Pecuniary limits of jurisdiction—Whether refer to turnover disclosed in the return—Application under Article 226—Maintainability—*Madhya Bharat Sales Tax Rules, 1950, Rules 3(2), 46—Constitution of India, Article 226.—KHEMCHAND RAJMAL v. CHIEF SECRETARY, MADHYA BHARAT GOVERNMENT AND OTHERS* [1957] 8 S.T.C. 313.

—*Kirana*—Meaning of—Whether includes turmeric—Whether turmeric falls under item 44, Schedule IV, *Madhya Bharat Sales Tax Act, 1950*, and taxable.—*COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE v. LADDUMAL JANGIAL OF DAULATGANJ* [1964] 15 S.T.C. 54.

—Essential goods—Scope of Article 286(3)—Whether Article 286(3) applies to enactments passed prior to declaration of goods as essential by Parliament—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952).—*INDORE IRON & STEEL REGISTERED STOCK-HOLDERS' ASSOCIATION (P.) LTD. v. THE*

STATE OF MADHYA PRADESH AND OTHERS [1961] 12 S.T.C. 622 (S.C.).

—Exemption—"Iron and steel"—Scrap iron sold after conversion into bars, flats and plates—Exemption whether available—Madhya Bharat Sales Tax Act, 2007 S.—Notification No. 58 dated October 24, 1953, Item No. 39.—THE STATE OF MADHYA BHARAT (NOW THE STATE OF MADHYA PRADESH) AND OTHERS *v.* HIRALAL [1966] 17 S.T.C. 313 (S.C.).

—Exemption certificate—Excess turnover—Whether liable to fee only or taxable—M. B. Sales Tax Act, 1950—M. B. Sales Tax Rules, 1950.—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v.* DAULATRAM DULICHAND, RATLAM [1967] 19 S.T.C. 502.

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—See also Sec. 10.

—Sch. I, entry 5—See Sec. 2(r).

—Sch. I, entry 6; Sch. II, item 38; Sch. II, Part VI, item 1—Exemption—Interpretation of entries in Schedules—P. V. C. rexine cloth—Whether leather-cloth—Whether taxable or exempt under Notification No. 2765-2264-VST dated 12th December, 1960—Rule of *ejusdem generis*—Applicability.—S. R. CALCUTTAWALA, SIYAGUNJ, INDORE *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1967] 19 S.T.C. 230.

—Sch. I, entry 14—Exemption—Examination answer-books—Whether "exercise books" and exempt under entry 14, Schedule I.—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v.* LOK CHETNA PRAKASHAN, JABALPUR [1968] 21 S.T.C. 355.

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—Sch. I, entry No. 21—Exemption—Interpretation of expressions used in taxing statutes—Khowa—Whether curd and exempt from sales tax.—COMMISSIONER OF SALES TAX, MADHYA PRADESH *v.* SHRI HARICHAND CHANDULAL, BHOMA, SEONI [1965] 16 S.T.C. 13.

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—Sch. II, Part II, entry No. 44—Tractor—Whether agricultural machinery—AGRAWAL BROTHERS *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH [1965] 16 S.T.C. 860.

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MADRAS GENERAL SALES TAX ACT

Madras General Sales Tax Act (IX of 1939)—Validity—Power of Provincial Legislature to impose tax on “*sale of goods*”—Whether includes power to levy tax on first sales—Whether conflicts with power of Federal Legislature to levy “*duty of excise*”—Interpretation of Indian Constitution Act—Government of India Act, 1935, Schedule VII, List I, entry No. 45 ; List II, entry No. 48—Value of Australian and American decisions.—PROVINCE OF MADRAS *v.* BODDU PAIDANNA AND SONS [1942] 1 S.T.C. 104 (High Court at p. 106 ; Federal Court at p. 116).

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being discriminatory—Whether rules inconsistent with provisions of Act—Validity of rules 15(2) and 16(5)—Writs under Constitution—Jurisdiction of High Courts—Whether section 10A repugnant to rules of natural justice—Constitution of India, Art. 226.—*SYED MOHAMED & CO. AND ANOTHER v. THE STATE OF MADRAS AND ANOTHER* [1952] 3 S.T.C. 367.

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—See also *FIRM A. T. B. MEHTAB MAJID & CO. v. THE STATE OF MADRAS AND ANOTHER* [1963] 14 S.T.C. 355 (S.C.), *A. HAJEE ABDUL SHUKOOR AND CO. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 719 (S.C.) and *A. HAJEE ABDUL SHUKOOR & CO. v. THE SPECIAL DEPUTY COMMERCIAL TAX OFFICER* [1969] 23 S.T.C. 455.

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Co. [1957] 8 S.T.C. 77 reversed by Supreme Court in [1962] 13 S.T.C. 335. See below:—

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—Railway receipts and invoices sent to ultimate purchasers—Whether there is sale by mill to petitioners and again by them to ultimate purchasers—Liability of petitioners to sales tax—Sale of Goods Act (III of 1930), Secs. 4(1), (3), 23(1).—HAJI P. K. MOIDOO BROS. *v.* THE STATE OF MADRAS [1959] 10 S.T.C. 1 (Ker.) (F.B.).

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Remedy of assessee—Principles of estoppel—Whether apply—Travancore-Cochin General Sales Tax Act (XI of 1125)—States Re-organisation Act (XXXVII of 1956).—SHANMUGHA VILAS CASHEW FACTORY *v.* STATE OF KERALA [1960] 11 S.T.C. 367 (Ker.).

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(1943) LTD. *v.* DEPUTY COMMERCIAL TAX OFFICER, MOUNT ROAD, MADRAS [1958] 9 S.T.C. 599 partly reversed in [1965] 16 S.T.C. 213 (S.C.).

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—Sec. 2(i-1)—See Sec. 2(b) and 2 (h).

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not receive assent of President under Article 286(3)—Validity of rules—Constitution of India, Article 286(3)—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (LII of 1952), Sec. 3.—*SREENIVAS AND Co. v. THE DEPUTY COMMERCIAL TAX OFFICER, MOORE MARKET DIVISION, MADRAS* [1960] 11 S.T.C. 68.

—Rule 16—Discriminatory legislation—Hides and skins—Freedom of trade—Scope of Articles 301, 303 and 304—Restrictions on power of States to tax goods imported from other States—Rule 16, Madras Turnover and Assessment Rules, as re-enacted in 1955—Validity—Whether has discriminatory effect—Whether contravenes Article 304(a)—Constitution of India, Articles 301, 303, 304.—*P. ABDUL SUBHAN & Co. v. THE STATE OF MADRAS AND ANOTHER* [1960] 11 S.T.C. 173.

—Rules 15, 16—Rules framed under Act—Validity—Rules 15 and 16 of Turnover and Assessment Rules—Whether has been properly promulgated—Approval by Assembly—Previous publication—Whether necessary—Scope of section 19(5)—Effect of section 7(e), Madras General Clauses Act, 1891, and section 9, Madras General Sales Tax, Sales of Motor Spirit Taxation and Entertainments Tax (Amendment) Act, 1957.—*V. BALUSWAMI NAIDU AND SONS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 231.

—Rules 15, 16—Rules made under Act—Validity—Rules 15 and 16 of Turnover and Assessment Rules made in 1955—Whether has been properly promulgated—Approval by Assembly—Previous publication as required by section 19(4), whether necessary—Effect of section 7(e), Madras General Clauses Act, 1891, and section 9, Madras General Sales Tax, Sales of Motor Spirit Taxation and Entertainments Tax (Amendment) Act, 1957—Construction of statutes.—*K. M. MOHAMED ABDUL KHADER v. THE STATE OF MADRAS AND ANOTHER* [1960] 11 S.T.C. 247.

—Rule 16(4)—Hides and skins—Agent of non-resident principals—Sale by agent, a licensed dealer—Principals not licensed dealers—Whether agent can be assessed to tax—Scope of section 14-A—Whether rule 16(4) contravenes Article 304, Constitution of India—Validity—Madras General Sales Tax Act (IX of 1939), Sec. 14-A.—*UNION LEATHER COMPANY v. STATE OF MADRAS* [1960] 11 S.T.C. 318.

—Rule 16(2), (3)—Hides and skins—Tanner—Purchase of raw hides and skins and tanning in tanneries other than his own—Liability to tax under rule 16(2).—*SRI JAY CHERISH AND Co., LTD. v. THE STATE OF MADRAS* [1960] 11 S.T.C. 353.

—Rule 16(2), (4)—Hides and skins—Tanner—Purchase of raw hides and skins and tanning in tannery not owned by him—Liability to tax under rule 16(2)—Hides and skins purchased inside State, tanned outside State, and exported to foreign countries—Whether rule 16(2) or (4) applies—Whether purchase taxable under rule 16(2).—*M. S. MOHAMMED HUSSAIN AND SONS v. THE STATE OF MADRAS* [1960] 11 S.T.C. 362.

—Rule 16—Hides and skins—Licence for 1953-54—Whether dealer entitled to concession of single point taxation in respect of sales to dealers in Madras after formation of Andhra State—Effect of section 53, Andhra State Act (XXX of 1953)—Madras General Sales Tax Act (IX of 1939), Sec. 5(vi).—*SRI PEERA MOHAMMAD MAHAMOOD SAHEB v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 456 (A.P.).

—Rule 16—Licence—Hides and skins—Dealer paying provisional fee and obtaining licence—Whether can refuse to pay balance of fee and claim to be assessed as unlicensed dealer—Consequences of not paying balance of fee—Mode of recovery—Exemption—Onus of proof—Madras General Sales Tax Rules, 1939, Rule 68—Madras Revenue Recovery Act (II of 1864), Section 52.—*K. M. KHUDRATHULLA AND Co. v. THE STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 595 (A.P.).

—Rule 16—Hides and skins—Scheme of taxation—Licensed dealers—Purchase of raw hides and skins partly from outside State and partly from unlicensed dealers inside State—Levy of tax on sale value of tanned hides and skins—Legality—Sale in the course of export—Whether foreign buyer last purchaser—Madras General Sales Tax Act (IX of 1939).—*E. K. MOHAMED IBRAHIM SAHIB AND SONS v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 343.

—Rules 4, 16—Hides and skins—Licensed dealer and tanner—Amendment of rules with retrospective effect from first April, 1955—Purchase of hides and skins from unlicensed dealers in 1954-55 and 1955-56—Sale after tanning—Sale value of unsold stock at commencement of 1955-56 included in turnover of that year—Whether assessee entitled to benefit of proviso to rule 16(2)—Sale in the course of export—Scope of Article 286(1)(b)—Whether sale to foreign buyer through agents exempt under Article 286(1)(b)—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, Rules 4, 16—Constitution of India, Art. 286(1)(b).—*M. R. K. ABDUL SALAM AND Co. v. THE GOVERNMENT OF MADRAS* [1962] 13 S.T.C. 629.

—Rule 16(2)—Discriminatory legislation—Hides and skins—New rule 16(2), Madras Turnover and Assessment Rules—Whether discriminates against hides and skins imported from other States and invalid—Scope of Article 304(a)—No jurisdiction to assess on account of invalidity of rule—Maintainability of petition under Article 32—Constitution of India, 1950, Articles 301, 304(a).—*FIRM A. T. B. MEHTAB MAJID & Co. v. THE STATE OF MADRAS AND ANOTHER* [1963] 14 S.T.C. 355 (S.C.).

—Rule 16—Hides and skins—Licensed and unlicensed dealers—Single point and multi-point tax—Whether provisions of Act discriminatory—Constitution of India, Art. 14.—*H. H. NAEEMS AND COMPANY v. THE STATE OF MADRAS* [1964] 15 S.T.C. 269.

—Rule 16—Discriminatory legislation—Hides and skins—Validity of Madras General Sales Tax (Special Provisions) Act (11 of 1963)—Whether section 2(1) discriminates against hides and skins imported from other States—Whether imposes tax on inter-State sales—Whether President's assent as required by Article 286(3) necessary for validity of Act—Raw and dressed hides and skins—Whether different commodities—Whether rule 16(1), Turnover Rules, became invalid when sub-rule (2) was declared invalid—Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act (52 of 1952)—Constitution of India, Art. 286(3), List I, entry 92A; List II, entry 54—Madras General Sales Tax Act (9 of 1939)—Madras General Sales Tax Act (1 of 1959).—*A. HAJEE ABDUL SHUKOOR AND Co. v. THE STATE OF MADRAS* [1964] 15 S.T.C. 719 (S.C.).

Madras General Sales Tax Rules, 1959, Rule 5(2)—See Secs. 2(d), (g) and 3(2) of Act of 1959.

—Rule 6—Turnover—Deductions—Insurance charges to cover risk in transit of goods—Whether part of turnover—Scope of rule 6.—*STATE OF MADRAS v. BALIGA LIGHTING EQUIPMENT (P.) LTD., GUINDY* [1969] 23 S.T.C. 154.

—Rule 6(c)—See Sec. 2(r) of Act of 1959.

—Rule 6(f)(ii)—Packing materials—Supply of cement under Cement Control Orders—Transaction not liable to be taxed—Value of gunny bags used for packing—Whether liable to be taxed.—*DALMIA CEMENT (BHARAT) LIMITED v. DEPUTY COMMERCIAL TAX OFFICER, LALGUDI, AND TWO OTHERS* [1969] 23 S.T.C. 355.

—Rule 6(g)—See Sec. 3 of Act of 1959.

—Rule 18—See Secs. 12, 32 and 55 of Act of 1959.

—Rule 22—See Sec. 3(3) (after amendment by Act 44 of 1961) of Act of 1959.

—Rule 22(5)—See Secs. 3(3) and 53 of Act of 1959.

—Rule 25—See Sec. 21A of Act of 1959.

—Rule 26(1), (2), (9)—See Secs. 10 and 40 of Act of 1959.

—Rule 26(13)—See Sec. 3(2) of Act of 1959.

—Rule 26(16)—See Sec. 45(2)(a) of Act of 1959.

—Rules 35, 36(2)—See Sec. 42(3) of Act of 1959.

—Form XVII—See Secs. 3(3) and 53 of Act of 1959.

Madras Sales of Motor Spirit Taxation Act (VI of 1939)—Tax on sale of motor spirit—Provisions in Act relating to registration of dealers and cancellation of registration for failure to pay tax—Validity—Whether unconstitutional as infringing Article 19(1)(g)—Constitution of India, Art. 19(1)(g), (6).—*M. A. RAHMAN AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS* [1961] 12 S.T.C. 392 (S.C.).

—Sec. 3(1)—Inter-State sales—Supply of motor spirit to State Transport Department, Nagercoil, from Trivandrum depot of oil company—No agreement regarding source of supply—Whether transaction inter-State or intra-State sale—Liability to tax.—*BURMAH SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA LTD. v. STATE OF MADRAS* [1966] 18 S.T.C. 479.

Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act, 1958—Assessment—Liability to pay tax under Hyderabad Sales of Motor Spirit Taxation Regulation (XXIV of 1358F.)—Whether saved by section 13, Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act, 1958, and clause 8, Madras General Clauses Act (I of 1891)—Whether assessee could be assessed to tax after repeal of Regulation.—*BUDHAN KHAN v. STATE OF ANDHRA PRADESH AND OTHERS* [1961] 12 S.T.C. 829 (A.P.).

MANGANESE

Manganese—Whether includes manganese ore—Rate of tax.—Under section 3(2-B), item (ii), of the Madras General Sales Tax Act, 1939, for the year 1956-57, "manganese" was taxable at the rate of six pies in the rupee at the point of purchase by the last dealer who bought it in the State, while "manganese ore" was not enumerated in any of the classes of goods mentioned in the Act. The Tribunal held that "manganese" cannot be interpreted as including "manganese ore" which was

therefore taxable only as general goods falling under section 3(1)(b) of the Act at every sale point at the rate of three pies in the rupee and remanded the matter to the assessing authority for making a fresh assessment. Both the assessee and the department preferred revisions, the department contending that "manganese" includes "manganese ore", the assessee contending that the Tribunal was wrong in remanding the matter: *Held*, (1) that "manganese" does not include "manganese ore" in the popular sense of the term, though from the scientist's point of view "manganese ore" may contain manganese. Therefore "manganese" and "manganese ore" are two distinct and different commodities; (2) that the Tribunal was right in remanding the matter for making a fresh assessment according to law. In interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their ordinary sense. *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286), *Motipur Zamindary Co. (Private) Ltd. v. The State of Bihar and Another* [1962] (13 S.T.C. 1) and *Commissioner of Sales Tax, Madhya Pradesh v. Jasant Singh Charan Singh* [1967] (19 S.T.C. Short Notes 5; 19 S.T.C. 469) applied.—*THE STATE OF ANDHRA PRADESH v. SATYANARAYANA KAITHAN (P.) LTD.* [1967] 20 S.T.C. 409 (A.P.).

MANUFACTURER

Artist not a manufacturer.—An artist who makes an etching for a client and provides him with a dozen copies is not a manufacturer of commodities.—*DEPUTY FEDERAL COMMISSIONER OF TAXATION (ADAMS) v. RAU* [1931] 46 Com. L.R. 572.

Bleaching and dyeing—Textile mill bleaching and dyeing goods brought by other mills—Articles used in bleaching and dyeing—Whether used in manufacture.—The petitioner was a partnership firm carrying on the business of manufacturing woollen textiles. Within the premises of the petitioner was having a separate department for bleaching, dyeing and finishing of textiles. This department dyed, finished and packed not only the goods of the petitioner but also of other textile mills. The partners in the textile mill and in the finishing mill were the same. The assessing authority assessed the petitioner on the raw material which had been purchased by it tax-free under its certificate of registration and utilised by it in the finishing of goods of other textile

mills. The petitioner filed an appeal against the order of assessment and also filed a petition under Article 226 of the Constitution of India for quashing the assessment order: *Held*, that the petition was wholly misconceived and the proper course for it was to pursue the remedy given to it by the East Punjab General Sales Tax Act, 1948, by way of appeal and, if possible, revision and/or reference to the High Court. *Obiter*.—Articles used in merely dyeing, bleaching and processing third parties' cloth could not be considered to have been used by the petitioner in the manufacture of any goods for sale.—PUNJAB WOOLLEN TEXTILE MILLS *v.* ASSESSING AUTHORITY, SALES TAX [1960] 11 S.T.C. 486 (Punj.).

Breaking of boulders into metal—Whether manufacture.—The breaking of boulders into metal (*gitti*) is "manufacture" within the meaning of section 2 (i)(a) of the Madhya Pradesh Sales Tax Act, 1947. The essence of manufacture is the changing of one object into another for the purposes of making it marketable. The definition of the word "manufacture" introduced into the Act by Act 20 of 1953 does no more than bring out the essential meaning of that word as used in the Act.—G. R. KULKARNI *v.* THE STATE [1957] 8 S.T.C. 294 (M.P.).

Bristles purchased for export cleaned and arranged into groups of different sizes and different colours—Whether manufacture or production.—The assessee bought bristles plucked by Kanjars from pigs, boiled them, washed them with soap and chemicals, sorted them out into groups of different colours and different sizes, tied each group in a separate bundle, made all bristles in a group of uniform size by clipping and then exported them to foreign countries for sale: *Held*, that the assessee was not a producer or a manufacturer and therefore section 2(h), Explanation II (ii) of the U.P. Sales Tax Act, 1948, did not apply to him. *Badri Prasad Prabha Shanker and Another v. Sales Tax Commissioner, U.P., Lucknow* [1963] (14 S.T.C. 208) distinguished.—COMMISSIONER, SALES TAX, U.P. *v.* CH. MITHOO LAL ROSHAN LAL [1963] 14 S.T.C. 781 (All.).

—Manufacture—Meaning of—Pig bristles purchased for sale in foreign countries—Cleaning and arranging of bristles according to their sizes and colours and tying them in bundles—Whether amount to manufacture.—The word "manufacture" has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. The

assessee, dealers in pig bristles, bought bristles plucked by Kanjars from pigs, boiled them, washed them with soap and other chemicals, sorted them out according to their sizes and colours, tied them in separate bundles of different sizes and despatched them to foreign countries for sale: *Held*, that the sales made in foreign countries were not taxable as the bristles were not manufactured goods within Explanation II (ii) to section 2(h) of the U.P. Sales Tax Act, 1948. *G. R. Kulkarni v. The State* [1957] (8 S.T.C. 294) distinguished. *Hiralal Jitmal v. Commissioner of Sales Tax* [1957] (8 S.T.C. 325) explained. *Dev Dass Gopal Krishnan v. The State of Punjab* [1967] (20 S.T.C. 430) relied on.—COMMISSIONER OF SALES TAX, U. P., LUCKNOW *v.* HARBILAS RAI AND SONS [1968] 21 S.T.C. 17 (S.C.).

Burden of proof—Medicines—Point of tax—Onus of proof that sale is by manufacturer or importer—Whether lies on the department.—GUPTA HOMEOPATHIC MEDICAL STORES *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1969] 24 S.T.C. 415 (All.).

Conversion of groundnut oil into vanaspati—Whether amounts to manufacture—Levy of purchase tax on purchase of oil—Legality.—The conversion of raw groundnut oil into hydrogenated oil, i.e., vanaspati, amounts to manufacture and therefore purchase tax is leviable on purchase of groundnut oil for manufacture of vanaspati under section 4 read with section 2(ff) of the Punjab General Sales Tax Act, 1948, as amended by Punjab Act No. 7 of 1958. *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] (11 S.T.C. 827) distinguished. *Union of India and Another v. Delhi Cloth and General Mills Co. Ltd. and Others* [1963] (A.I.R. 1963 S.C. 791) relied on.—AMRITSAR SUGAR MILLS COMPANY LIMITED *v.* U.S. NAURATH, THE ASSESSING AUTHORITY, AMRITSAR, AND OTHERS [1964] 15 S.T.C. 814 (Punj.).

—In producing the vegetable product known as vanaspati, a process of manufacture is involved and vegetable oils such as groundnut oil and til oil are used for the purpose of that manufacture.—R. M. KRISHNASWAMY NAIDU & SONS AND OTHERS *v.* THE STATE OF MADRAS [1965] 16 S.T.C. 671 (Mad.).

Cotton—Ginned and unginned cotton—Person buying raw cotton and selling, after ginning, ginned cotton and cotton seed—Imposition of tax on purchase and sale transactions inside State—Legality—Provisions of East Punjab Act imposing such tax—Whether contravene sections 14 and 15, Central Sales Tax Act, 1956—Validity—

Ginning process—Whether can be deemed manufacture—Imposition of similar tax on (1) persons purchasing oil-seeds, converting them into oil and selling oil, and (2) on persons purchasing iron scrap and selling finished goods—**Legality**—East Punjab General Sales Tax Act (46 of 1948), Section 2(ff), (i)—East Punjab General Sales Tax (Amendment) Act (7 of 1958)—Constitution of India, Article 286(3).—**RAGHBIR CHAND SOM CHAND v. EXCISE AND TAXATION OFFICER, BHATINDA, AND OTHERS** [1960] 11 S.T.C. 149 (Punj.) (see page 238 *supra*).

—Cotton and cotton seeds—Whether two different goods—Dealer in cotton—Taxation of cotton at purchase point and of cotton seeds at sale point—**Legality**—Andhra Pradesh General Sales Tax Act (6 of 1957), Secs. 5, 6; Sch. II, item 23; Sch. IV, item 5.—**KOTAK AND COMPANY v. THE STATE OF ANDHRA PRADESH** [1962] 13 S.T.C. 709 (A.P.) (see page 239 *supra*).

Dealer in linseed oil converting oil-seeds into oil in another's mill after paying charges for crushing—*Whether manufacturer of oil*.—In order to become a manufacturer of linseed oil it is not essential that he should himself produce oil from oil-seeds with his own machinery in his own premises. If he gets oil-seeds crushed into oil through a servant or agent, the law regards him as having done the crushing himself and he will be a manufacturer of linseed oil. The assessee, a dealer in linseed oil bought oil-seeds, got them crushed in another's mill, paid him the charges for crushing, brought the oil to his own premises and then sold the oil: *Held*, that the assessee was a manufacturer of linseed oil. The owner of the mill did not do any business in oil and did not crush oil-seeds into oil in order to deal in it; his business was not to sell oil but to let out on hire his mill and the production of oil from oil-seeds was only an incidental result of his letting out his mill to the assessee. When he did not own the oil-seeds he could not be the manufacturer of the oil produced by him. Linseed oil is an edible oil within the meaning of the notification dated 8th June, 1948, issued under the U.P. Sales Tax Act, 1948.—**BULBU PRASAD AMARNATH v. COMMISSIONER OF SALES TAX, U.P.** [1964] 15 S.T.C. 46 (All.).

Different classes of manufacturers—Legislation, whether discriminatory.—The amendments introduced into the Madras General Sales Tax Act, 1939, by the Amending Act XIII of 1955 did not offend Article 14 of the Constitution by introducing an unreasonable discrimination between different classes of manufacturers.—**RAMRAJ**

TOBACCO TRADING COMPANY v. THE ASSISTANT COMMERCIAL TAX OFFICER, ATTUR, AND OTHERS [1957] 8 S.T.C. 127 (Mad.).

Dispensing chemist—Whether manufactures or produces goods for sale.—Section 4, sub-section (5), clause (a), of the Bengal Finance (Sales Tax) Act (VI of 1941) applies to a dispensing chemist whose gross turnover exceeds Rs. 10,000 during the prescribed year and, therefore, such a person's business is liable for registration under section 7 of the Act. **GENTLE, J.**—A chemist who dispenses prescriptions of doctors produces goods for sale within section 4(5)(a). **DAS, J.**—"To manufacture or produce goods for sale" within the meaning of the Bengal Finance (Sales Tax) Act, which is concerned with "dealers", i.e., persons engaged in the business of selling or supplying goods, must mean to bring into being a commercial article for sale in the business in which the dealer is engaged, i.e., an article which by itself has a commercial value and which can be the subject-matter of a sale for a price in course of the business of selling or supplying in which he is engaged. The following observations of **DAS, J.**, as to the meaning of the word "manufacture" in the Bengal Finance (Sales Tax) Act, 1941, are very instructive:—"To manufacture goods' in common parlance means 'to bring goods into being'. To manufacture or produce goods for sale means to bring into being or to produce something in a form in which it will be capable of being sold or supplied in course of business. The essence of manufacturing, I apprehend, is that something is produced or brought into existence which is different from that out of which it is made, in the sense that the thing produced is by itself commercial commodity which is capable as such of being sold or supplied. It does not mean that the materials with which the thing is manufactured must necessarily lose their identity or become transformed in their basic or essential properties. When a goldsmith takes up a lump of gold and fashions it into an ornament the gold remains gold but the ornament produced is, commercially, as well as in common parlance, something different from a mere lump of gold. When a cobbler uses leather and makes a pair of boots, the leather does not lose its existence, it still remains leather, but the pair of boots is, commercially, as in ordinary speech, a thing different from the leather with which it is made. When a carpenter makes a box out of wood, the box, though it is still wood, is different from mere wood. When a tailor makes a suit of clothes, it does not cease to be cloth, but commercially it is a different thing. In each of these

cases a thing is made which is capable of being sold or supplied as a particular commercial article. When a dispensing chemist mixes different drugs according to the prescription of a physician, the drugs may or may not be transformed into a different matter. The mixture may become a chemical compound in which the drugs used may have been transformed into a totally different thing in their character and properties, or it may result in what is called a mechanical or physical mixture, in which each drug retains its original properties. But in either case the resulting mixture is a distinct product brought into being in a particular form suitable for the particular use for which it is intended and capable of being sold or supplied for a price. When a man goes into a chemist's shop with a prescription he does not ask for this, that or the other drug mentioned in the prescription, but he really wants the finished product in a form in which as a medicine it will be suitable for the use of the patient and when the chemist compounds the drugs according to the prescription he produces that medicine and sells, not so many different drugs of different quantities or measures, but the finished product. The selling of the finished product is his business and he brings it into being for sale in his business. This finished product is different from the ingredients with which it is made, just in the same sense as an ornament is different from the lump of gold or a pair of boots different from the leather or a suit of clothes is different from the cloth or a box is different from the wood, but it is the article which he brings into being for sale in course of his business. I decline to be drawn into an academic discussion as to the abstract meaning of the term 'manufacture', or as to whether the application of the creative faculty is of the essence of manufacture and so forth. I do not think it is useful to refer to the definition of the term in other statutes of this country, *e.g.*, Patent and Designs Act or of other countries, *e.g.*, the English Finance Act or the Australian Sales Tax Act. All we have to ascertain is the meaning in which the term has been used in this particular Act. I have come to the conclusion that in common parlance 'to manufacture' is to bring into being. 'To manufacture or produce goods for sale' within the meaning of the Bengal Finance (Sales Tax) Act, which is concerned with 'dealers', *i.e.*, persons engaged in the business of selling or supplying goods, must mean to bring into being a commercial article for sale in the business in which the dealer is engaged, *i.e.*, an article which by itself has a commercial value and which can be the subject-matter of a sale for a price in course of the

business of selling or supplying in which he is engaged. Although the term 'manufacture' may, in a modern sense, connote production on a large scale, that, in my opinion, is not at all a test for the Act itself has indicated some scale by fixing the taxable quantum. Nor do I think that production for general public use is the essence of manufacture for the purposes of this Act. A goldsmith or a tailor or a shoemaker who only makes things to the order of particular customers is not any the less a manufacturer or producer than a goldsmith or a tailor or a shoemaker who makes and keeps ready-made things for all and sundry."—*NORTH BENGAL STORES LTD. v. MEMBER, BOARD OF REVENUE, BENGAL* [1946] 1 S.T.C. 157 (Cal.).

Doctor selling medicines to patients according to prescriptions issued by him—Whether manufacturer of medicines—Liability to sales tax.—See *DISPENSING CHEMIST*, page 508 *supra*.

Ginning of cotton—Whether manufacturing process is involved—Sale of ginned cotton and cotton seeds after ginning—Right to deduction of purchase price of unginned cotton under section 5(2)(vi), Punjab General Sales Tax Act, 1948.—No manufacturing process is involved in ginning cotton and the process of ginning does not create anything new or distinctive. Where a dealer purchased a certain quantity of unginned cotton and after ginning sold the entire quantity of ginned cotton and cotton seeds, he must be held to have sold the entire unginned cotton which he had purchased and if the sale was within the specified time to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India full deduction of the purchase price of unginned cotton must be allowed under section 5(2)(vi) of the Punjab General Sales Tax Act, 1948. Where only a part of the proceeds of ginning had been disposed of, a corresponding deduction must be permitted. In such a case the Assessing Authority had to fix the purchase price of the ginned cotton or the cotton seeds that had been actually disposed of according to section 5(2)(vi) by calling and considering evidence bearing on that matter.—*PATEL COTTON COMPANY (PRIVATE) LTD. v. THE STATE OF PUNJAB AND OTHERS* [1964] 15 S.T.C. 865 (Punj.). But this decision was overruled in *STATE OF PUNJAB v. CHANDU LAL KISHORI LAL* [1970] 25 S.T.C. 52 (S.C.).

Ginning process of cotton—Whether manufacture.—*RAGHBER CHAND SOM CHAND v. EXCISE AND TAXATION OFFICER* [1960] 11 S.T.C. 149 (Punj.).

Iron and steel—Purchase of iron and steel for purpose of rolling them into rolled steel sections—Levy of purchase tax—Legality—Levy of (1) sales tax on sale of steel to ordinary consumer, (2) purchase tax on sale of steel to manufacturer, and (3) sales tax on sale of rolled steel sections—Whether contrary to provisions of section 15, Central Sales Tax Act—East Punjab General Sales Tax Act (46 of 1948), Sec. 2(ff).—DEVGUN IRON AND STEEL ROLLING MILLS, GOBINDGARH *v.* THE STATE OF PUNJAB AND OTHERS [1961] 12 S.T.C. 590 (Punj.) (page 239 *supra*). See also [1967] 20 S.T.C. 430 (S.C.).

—Scrap iron purchased by the respondent was processed for convenience of sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The bars, flats and plates sold by the respondent were "iron and steel" exempted under the notification.—THE STATE OF MADHYA BHARAT (Now the STATE OF MADHYA PRADESH) AND OTHERS *v.* HIRALAL [1966] 17 S.T.C. 313 (S.C.).

Iron sheets—Corrugated iron sheets—Whether a form of iron or an article of iron—Whether a product manufactured out of iron.—STATE OF GUJARAT *v.* SHAH VELJIBHAI MOTICHAND, LUNAWADA [1969] 23 S.T.C. 288 (Guj.).

Making camphor cubes from camphor—*Whether a process*.—By converting camphor powder into camphor cubes, the petitioner processed camphor powder into camphor cubes and fell within the definition of "dealer" in the West Bengal Sales Tax Act, 1954.—SRI OM PRAKAS GUPTA *v.* COMMISSIONER OF COMMERCIAL TAXES AND OTHERS [1965] 16 S.T.C. 935 (Cal.).

Manufacture—Meaning of.—EPARI CHINNA KRISHNA MOORTHY AND ANOTHER *v.* STATE OF ORISSA [1964] 15 S.T.C. 461 (S.C.).

—The dictionary meaning of "manufacture" is "transform or fashion raw materials into a changed form for use." When oil is produced out of the seeds the process certainly transforms raw material into different article for use. Now coming to Civil Appeals Nos. 39 to 43 of 1965, the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process of manufacture. It is contended that the said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed. That apart, it is clear that scrap iron

ingots undergo a vital change in the process of manufacture and are converted into a different commodity, *viz.*, rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture.—DEVI DASS GOPAL KRISHNAN AND OTHERS *v.* THE STATE OF PUNJAB AND OTHERS (and other cases) [1967] 20 S.T.C. 430 (S.C.).

Manufacture—Glass bangles—Reassessment under Central Sales Tax Act—Import of glass bangles and sale after painting liquid gold on them—Liability as importer and as manufacturer—Manufacture—Meaning of—Scope of notification.—PAWANSUT BANGLE STORES, FIROZABAD *v.* ASSISTANT SALES TAX OFFICER, FIROZABAD, AND ANOTHER [1966] 18 S.T.C. 87 (All.).

Medical practitioner.—"The medical practitioner who provides the service of making X-rays and furnishes copies of the skiagraph to the patient, although he causes a new thing or entity to come into existence, is not a producer of goods."—DEPUTY FEDERAL COMMISSIONER OF TAXATION (ADAMS) *v.* RAU [1931] 46 C.L.R. 575.

—See also DISPENSING CHEMIST, page 508 *supra*.

Motor-cars—Purchase and dismantling of old motor-cars and sale of spare parts taken out from them—Liability to sales tax as processors, producers or manufacturers.—COLLECTOR OF SALES TAX *v.* ABDUL RAHMAN ALLADIN [1963] 14 S.T.C. 803 (Guj.).

Ornaments—Removal of alloy from gold ornaments—*Whether involves process of manufacture*—"Manufacture"—Meaning of.—The word "manufacture" has various shades of meaning, but as used in section 2(ff) of the East Punjab General Sales Tax Act, 1948, it involves a process of manual labour by which one object is changed into another for selling it. Even removal of alloy from old gold ornaments so as to convert them into bullion might well involve a process of manufacture and therefore purchase of old gold ornaments for converting them into bullion for sale may come within the definition of the word "purchase" in section 2(ff).—PURAN CHAND GOPAL CHAND, BAZAR SARAF *v.* THE STATE OF PUNJAB AND OTHERS [1963] 14 S.T.C. 252 (Punj.).

—Manufacturer of gold ornaments maintaining stock of gold and advancing gold for manufacturing ornaments and charging merchants for labour only—Merchants supplying gold either before or after manufacture—Manufacturer whether dealer.—See COLLECTOR OF SALES TAX *v.* KANTHADBHAI

& POPATLAL [1959] 10 S.T.C. 516 (Bom.) (page 643 *supra*).

—Manufacturer of gold ornaments—Exemption—Merchants making gold ornaments by independent artisans—Whether manufacturer.—J. SRIRANGAM BROTHERS AND OTHERS *v.* SALES TAX OFFICER, GANJAM CIRCLE, BERHAMPUR [1959] 10 S.T.C. 257 (Ori.) (page 643 *supra*).

—Manufacturer of gold ornaments—Exemption—Validity of Act making clear intention in granting exemption—Whether Act discriminatory—Whether infringes Article 14 or 19(1)(g), Constitution of India.—In exercise of the powers under section 6 of the Orissa Sales Tax Act, 1947, the Government of Orissa issued a notification exempting from sales tax gold ornaments “when the manufacturer selling them charges separately for the value of gold and cost of the manufacture.” The petitioner carrying on business in gold and silver ornaments supplied gold to artisans, got the ornaments prepared by the artisans under his supervision and sold the ornaments in his shop showing the value of gold and cost of manufacture separately. The High Court held that the petitioner was a manufacturer of gold ornaments and was therefore entitled to the benefit of the exemption under the notification. Subsequently, the Orissa Legislature passed the Orissa Sales Tax Validation Act, 1961, section 2 of which provided as follows:—“Notwithstanding anything contained in any judgment, decree or order of any court, the word ‘manufacturer’ occurringin the Notification.....shall mean and shall always be deemed to have meant a person who by his own labour works up materials into suitable forms and a person who owns or runs a manufactory for the purpose of business with respect to the articles manufactured therein.” The petitioner challenged the validity of this section on the following grounds: (i) Since the exemption was granted by the State Government by virtue of the powers conferred on it by section 6 of the Orissa Sales Tax Act, 1947, it was not open to the Legislature to take away that exemption retrospectively; (ii) The section contravened the provisions of Articles 14 and 19(1)(g) of the Constitution: *Held*, (i) that although the State Government was given the power either to grant or withdraw the exemption, that could not affect the Legislature’s competence to make any provision in that behalf either prospectively or retrospectively and therefore section 2 was not invalid; (ii) that the persons who got the benefit of the exemption notification as a result of the provisions of section 2 could not be said to belong to the same class as the petitioner and

therefore that section did not contravene Article 14; (iii) that, in the circumstances of the case, it could not be said that by making the provisions of section 2 retrospective the Legislature had imposed a restriction on the petitioner’s fundamental right under Article 19(1)(g) which was not reasonable and was not in the interest of the general public.—EPARI CHINNA KRISHNA MOORTHY AND ANOTHER *v.* THE STATE OF ORISSA AND OTHERS [1964] 15 S.T.C. 461 (S.C.).

—Manufacture, manufactory—Meanings of—Making of gold ornaments by artisans engaged by dealer in his workshop—Orissa Sales Tax Validation Act (7 of 1961).—Amanufactory is a place where a manufacture is carried on and the process by which gold is converted from its natural state to the article of commerce known as ornament is a manufacture. Where the petitioner carrying on the business of selling gold ornaments engaged ten artisans for making gold ornaments out of gold supplied by the petitioner and these artisans made the ornaments under the direct supervision and control of the petitioner at the petitioner’s workshop: *Held*, that the artisans formed a manufactory owned or run by the petitioner for the purpose of business with respect to the articles manufactured therein within the meaning of section 2 of the Orissa Sales Tax Validation Act, 1961.—JAMMULA SRIRANGAM BROS. *v.* SALES TAX OFFICER, GANJAM, CIRCLE I [1966] 17 S.T.C. 69 (Ori.).

—Pan-shop dealer preparing pan or vidas and selling them—Whether engaged in manufacture or processing of goods.—When a pan-shop dealer prepares pan or vidas for sale, he is not engaged in the manufacture of any goods, but he is undoubtedly engaged in the processing of goods and therefore he is a dealer whose activity falls within the provisions of section 5(1)(b)(ii) of the Bombay Sales Tax Act, 1953. Use of mechanical force is not necessary for an activity to become “processing” of goods within the meaning of section 5(1)(b)(ii). Even the use of manual force or use of the hand will do. *Nilgiri Ceylon Tea Supplying Co. v. The State of Bombay* [1959] (10 S.T.C. 500) referred to.—COMMISSIONER OF SALES TAX *v.* DAMODAR PADMANATH RAO [1968] 22 S.T.C. 187 (Bom.).

Person holding sales and other rights to goods manufactured by company—Whether manufacturer.—Section 86(1) of the Canadian Excise Tax Act, 1927, provided: “There shall be imposed, levied and collected a consumption or sales tax of eight per cent. on the sale price of all goods (a) produced or manufactured in Canada (i) payable,

in any case other than a case mentioned in sub-paragraph (ii) hereof, by the producer or manufacturer at the time when the goods are delivered to the purchaser or at the time when the property in the goods passes, whichever is the earlier." Section 2(c)(ii) defined "manufacturer or producer" as including "(ii) any person, firm or corporation which owns, holds, claims or uses any patent, proprietary, sales or other right to goods being manufactured, whether by them, in their name, or for on their behalf by others, whether such person, firm or corporation sells, distributes, consigns or otherwise disposes of the goods or not." The defendant was a retail jeweller carrying on business at Toronto. He entered into a contract with a company pursuant to which large number of toys were completely manufactured by the company and delivered to the defendant who sold them to departmental stores and jobbers. The plaintiff (revenue authorities) alleged that the defendant as producer or manufacturer of the goods so sold by him was liable to a sales tax of eight per cent. on the sale price of such goods as provided by section 86(1)(a)(i). The defendant contended that the company were the manufacturers or producers of the goods and as such were solely liable for payment of the sales tax. He further contended that he had paid sales tax to the company and should not therefore be required to pay it again. It was found that the company were manufacturing the toys for the defendant only. The dies to be used in their manufacture were made by the company upon the instructions and at the expense of the defendant and they were the defendant's property. The company could not sell the toys to anyone but the defendant and for a period of two years from the completion of the contract could not manufacture a similar article: *Held*, (1) that the defendant held a sales or other right to the goods being manufactured on his behalf by the company and therefore was the manufacturer or producer of such goods and was liable for the payment of the sales tax on the sale price of the goods when sold by him; (2) that in the absence of a clause in the contract requiring the company to pay the sales tax, it could not be held that the defendant, merely by paying the company bills marked "sales tax included" did in fact pay any sales tax; (3) that as he was producer of the goods he was not liable to pay sales tax to the company and payment to them did not exonerate him from liability to pay the tax to the plaintiff.—*THE KING v. REUBEN SHORE* [1949] C.T.C. 159.

Printing and dyeing—Person engaged in printing and dyeing of cloth manufactured by mills—

STD—95

Whether manufacturer.—To constitute "manufacture" for the purposes of the Madhya Bharat Sales Tax Act, 1950, it is not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the manufactured article becomes commercially known as another and different article from the raw materials. All that is necessary is that the material should have been changed or modified by man's art or industry so as to make it capable of being sold in an acceptable form to satisfy some want, or desire or fancy or taste of man. A person who is engaged in the work of printing and dyeing textiles purchased by him and in the business of selling or supplying the printed and dyed material is a manufacturer within the meaning of the definition given in section 2(k) of the Act. The fact that sales tax had been recovered on the sale of the cloth by the manufacturing mills or by the importer will not prevent recovery of the sales tax on the sale of dyed and printed goods under section 5(1).—*HIRALAL JITMAL v. COMMISSIONER OF SALES TAX* [1957] 8 S.T.C. 325 (M.P.).

Printer—Whether manufacturer.—See **PRINTER.**

Process of mining mica—Whether manufacture of goods.—The process of mining mica is tantamount to manufacture of goods within the meaning of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949. The word "manufacture" in section 2(g) means that something is brought into existence which is different from that originally existing, in the sense that the thing produced is itself a commercial commodity which is capable as such of being sold or supplied.—*THE STATE OF BIHAR v. CHRESTIEN MICA INDUSTRIES LTD.* [1956] 7 S.T.C. 626 (Pat.) affirmed by Supreme Court. See below:—

Process of mining mica—Whether production of mica.—The process of mining mica is a process of production within the meaning of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Bihar Act VI of 1949. Decision of the Patna High Court in *The State of Bihar v. Chrestien Mica Industries Ltd.* [1956] (7 S.T.C. 626) affirmed.—*CHRESTIEN MICA INDUSTRIES LTD. v. THE STATE OF BIHAR AND ANOTHER* [1961] 12 S.T.C. 150 (S.C.).

Purchase tax—Possibility of tax being imposed on purchase at more than one stage—Provision in State Act, whether contravenes section 15(a), Central Sales Tax Act—Act imposing purchase tax irrespective of use—Old

notification fixing rate of tax on purchase for the purpose of use in the manufacture of goods—Whether applicable—Punjab General Sales Tax Act (46 of 1948), Secs. 2(ff), 5(1), (2)(a)(vi), 12.—*BHAWANI COTTON MILLS LTD. v. THE STATE OF PUNJAB AND ANOTHER* [1967] 20 S.T.C. 290 (S.C.) (see page 238 *supra*).

—Tax on the purchase of goods for use in manufacture—Whether excise duty—"Purchase", definition—"Acquisition of goods", "valuable consideration", meanings of—Purchase of goods for manufacture and sale of manufactured product—Tax at point of purchase and sale—Whether same goods are taxed—Punjab General Sales Tax Act (46 of 1948), Secs. 2(ff), 4, 5.—*DEVI DASS GOPAL KRISHNAN AND OTHERS v. THE STATE OF PUNJAB AND OTHERS* [1967] 20 S.T.C. 430 (S.C.) (see page 237 *supra*).

—Tax on purchases by manufacturer.—See page 292 *supra*.

—Tax on first sale by manufacturer.—See page 291 *supra*.

Remodelling of old garments—*Whether manufacture*.—Section 17A of the Australian Sales Tax Assessment Act (No. 1) 1930-42, provides that where goods are manufactured for a person wholly or in part out of materials supplied by him the manufacturer of the goods shall be deemed to have sold the goods to the first mentioned person, at the time of their delivery to him for the amount charged to him by the manufacturer in respect of those goods. The word "manufacture" is defined by section 3(1)(b) to include the combination of parts or ingredients whereby an article or substance is formed which is commercially distinct from those parts. The taxpayer was a company which carried on business in Sydney as a furrier and repaired and remodelled fur garments. The company was registered under the Act as a manufacturer. The Commissioner claimed sales tax in respect of fur costs, stoles, capes and collars which the defendant company had remodelled on the ground that the remodelling of fur garments amounted to a manufacture of goods. The Commissioner distinguished repair from remodelling and did not claim sales tax in respect of repair even though it might mean some change from the original material: *Held*, by the High Court (DIXON and WILLIAMS, JJ.—WEBB, J., dissenting) that the remodelling of the garments amounted to a manufacture of goods within the meaning of the Sales Tax Assessment Act. DIXON, J., in delivering the judgment quoted with approval the observations of DARLING, J., in *McNicol v. Pinch*

([1906] 2 K.B. 352) that "the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made." He said that the decisive question in the case was, therefore, whether "the garments which result from the process of remodelling are different things, *i.e.*, are different 'goods', from the garments that the customer hands over. This, perhaps, is rather a question of fact than of law....." WILLIAMS, J., said as follows:—"The ordinary meaning of the verb manufacture is to work up materials into forms suitable for use. Where new materials are supplied there would plainly be a notional manufacture of goods within the meaning of the Act. Where old materials are supplied there would only be such a manufacture if the work done was more than a mere repair or modification of the old materials and was such as to change the old goods into goods of a different character." WEBB, J., said that it was a difficult question of fact and that the garments after their remodelling remained second-hand garments. He further said that they were not commercially distinct from the used garments and so did not attract sales tax on an actual or notional sale.—*FEDERAL COMMISSIONER OF TAXATION v. JACK ZINADER PTY LTD.* 9 A.T.D. 46.

Sale of goods produced by manufacture, agriculture, horticulture or "otherwise"—*Person selling trees of spontaneous growth*—*Whether "dealer"*.—The question was whether the respondent which owned and maintained vast areas of forest land, was a "dealer" within the meaning of section 2(viii)(e) of the Kerala General Sales Tax Act, 1963, and liable to sales tax in respect of the sale of trees of spontaneous growth in its estate. The respondent had not been found to have done anything towards the production of the trees and the cutting of the trees was done by the contractor: *Held*, that the respondent was not a "dealer" within the meaning of the definition in section 2(viii)(e) of the Act. In order to fall within the definition of "dealer" a person had to sell goods produced by him by manufacture, agriculture, horticulture or otherwise. Trees of spontaneous growth could not be regarded as having been produced by such person by agriculture or horticulture. The word "otherwise" could not cover trees of spontaneous growth since the element of production must be present. In the context in which the word "produced" occurred, it could only mean "to bring forth, bring into being or existence—to bring (a thing) into existence from its raw materials or elements." The intention in employing

the word "produced" was to introduce an element of volition and effort involving the employment of some process for bringing into existence the goods. The respondent could not, therefore, be regarded as a person who sold goods produced by him by agriculture, horticulture or otherwise.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, CENTRAL ZONE, ERNAKULAM *v.* PALAMPADAM PLANTATIONS LTD. [1969] 23 S.T.C. 231 (S.C.).

Timber cut from forest sold after converting into logs or rafters—*Person, whether a manufacturer or producer of goods*.—The non-applicant was convicted under section 24(1) (a) of the C. P. and Berar Sales Tax Act, 1947, for dealing in timber cut from Government forest without holding a registration certificate. On a reference to the High Court the non-applicant contended that he only cut the trees and made them in a transportable form and therefore he could not be said to be a dealer, who manufactured or produced goods within the meaning of section 2(1)(a). It was found that the non-applicant made the cut trees into logs or rafters and sold them as such: *Held*, that the non-applicant was a dealer who manufactured or produced goods within the meaning of section 2(1)(a).—THE STATE OF MADHYA PRADESH *v.* WASUDEO [1955] 6 S.T.C. 30 (Nag.).

Chopping of timber into firewood—*Whether manufacture*.—Chopping of timber into firewood is a manufacturing process, and therefore firewood is a manufactured article. The imposition of a tax on timber and a tax on firewood manufactured from that timber does not amount to double taxation.—BACHHA TEWARI AND ANOTHER *v.* DIVISIONAL FOREST OFFICER, WEST MIDNAPORE DIVISION, AND OTHERS [1963] 14 S.T.C. 1067 (Cal.).

Manufacture—Meaning of—Sawing of planks from timber or sizing the same—*Whether amounts to manufacture*.—Sawing of planks from timber or sizing the same amounts to manufacture and the person carrying on such a business is a manufacturer. When planks are sawed out of logs, what is produced is a different thing from logs capable of being put to different uses. *Union of India v. Delhi Cloth and General Mills Co. Ltd.* [1963] (A.I.R. 1963 S.C. 791) referred to.—SHAW BROS. AND CO. *v.* THE STATE OF WEST BENGAL [1963] 14 S.T.C. 878 (Cal.).

Cutting of timber and conversion of some of them into ballis—*Whether timber used for manufacture of "other goods"*—*Whether purchase tax can be levied*.—By felling standing timber trees, cutting them and converting some of them into ballis, a dealer does not alter their character as timber or

uses them for the manufacture of "other goods" within the meaning of section 8(1) of the M. P. General Sales Tax Act, 1958. Such goods retain their character as timber and do not become "other goods" and, therefore, purchase tax cannot be levied under section 8(1).—MOHANLAL VISHRAM *v.* COMMISSIONER OF SALES TAX, MADHYA PRADESH, INDORE [1969] 24 S.T.C. 101 (M.P.).

Tobacco—Crushing and sieving—*Whether a process of manufacture*—Crushed and sieved tobacco—*Whether tobacco not subject to any process of manufacture*—*Whether exempt*.—BADRI PRASAD PRABHA SHANKER AND ANOTHER *v.* SALES TAX COMMISSIONER, U.P., LUCKNOW [1963] 14 S.T.C. 208 (All.) (page 560 *supra*).

Beedi tobacco purchased by assessee for manufacturing beedis—*Whether falls under section 5 (vii) or (viii)*—*Whether subjected to any manufacturing process*.—DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION *v.* C. ABDUL SHUKOOR SAHIB AND COMPANY [1963] 14 S.T.C. 670 (Mad.).

Purchase of raw tobacco and sale after conversion into chewing tobacco—*Excise duty paid on raw tobacco used for manufacturing chewing tobacco*—*Whether deductible from turnover of chewing tobacco*.—The expression "in respect of the goods" in rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, means only "on the goods": only excise duty paid on the goods sold by the dealer is deductible from the gross turnover under rule 5(1)(i). *Held*, accordingly, that the respondent-firm, which purchased raw tobacco and converted it by a manufacturing process into chewing tobacco and sold it in small paper packets, was not entitled to deduction of excise duty paid by it on the raw tobacco from the gross turnover of sales of chewing tobacco under rule 5(1)(i). *Bell Mark Tobacco Co. v. Government of Madras* [1961] (12 S.T.C. 126) overruled on this point. Decision of the Madras High Court partly reversed.—THE STATE OF MADRAS *v.* SWASTHIK TOBACCO FACTORY [1966] 17 S.T.C. 316 (S.C.).

The respondents, who were dealers in tobacco and tobacco products, were assessed to sales tax on the turnover from the sales of "chewing tobacco". The process of preparation of "chewing tobacco" was as follows: The respondents purchased raw tobacco and after sprinkling jaggery or plain water on the bundles of tobacco, allowed the tobacco to ferment for some days. Heat was thereby generated and the tobacco was well processed. Stalks of tobacco were broken and removed, and sand and dust were also removed. After paying excise duty the bundles of tobacco were brought to the premises of the factory.

Jaggery juice was sprinkled on the tobacco and it was then cut into thin strips by shearing machines. This tobacco was allowed to dry for some days and flavouring essences were then sprinkled on it. It was then packed in special wrappers and these packets were known as "chewing tobacco" packets. A large number of workmen was employed to carry out these several processes: *Held*, (1) that the various processes to which the raw tobacco was subjected amounted to a manufacturing process, and therefore the chewing tobacco sold by the respondents was not the same commodity as raw tobacco but was a manufactured product from raw tobacco purchased by the respondents; (2) that the expression "in respect of the goods" in rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, meant "on the goods", and therefore only the excise duty paid on the goods sold by a dealer was deductible; (3) that the excise duty paid in respect of raw tobacco was not liable to be excluded in the computation of the taxable turnover of the respondents, since the excise duty paid in respect of raw tobacco used in the manufacture of chewing tobacco was not duty paid in respect of the goods sold by the respondents within the meaning of rule 5(1)(i) of the rules; (4) that the respondents were also not entitled to get rebate under section 5 of the Madras General Sales Tax Act, 1939, in respect of the excise duty paid by them on raw tobacco, inasmuch as tax in the proviso to that section did not include "excise duty". *State of Madras v. Swasthik Tobacco Factory* [1966] (17 S.T.C. 316) followed.—*THE STATE OF MADRAS v. BELL MARK TOBACCO Co.* [1967] 19 S.T.C. 129 (S.C.).

Turnover as manufacturer or processor—*Whether can be added to general turnover and make dealer liable at lower limit.*—Section 4 of the Central Provinces and Berar Sales Tax Act, 1947, provides: "Every dealer whose turnover during the year preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act." Taxable quantum as defined in section 2(1) means: "(a) in relation to any dealer who himself manufactures or produces any goods for purposes of sale by himself, five thousand rupees; or (b) in relation to dealers not falling within clause (a), such sum or sums as may be prescribed." The limit in the case of an importer of goods and other dealers is prescribed by rule 18 of the Sales Tax Rules which is as follows:—"The taxable quantum in relation to dealers not falling within sub-clause (a) of

clause (1) of section 2 shall be Rs. 5,000 for importers of goods and Rs. 25,000 for other dealers." Section 2(j) of the Act defines turnover as follows:—"Turnover" means the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period: "Held, that the words "five thousand rupees" in section 2(1)(a) refer to the turnover of goods manufactured or produced by a dealer for purposes of sale by himself. The words do not refer to the sale price of goods not manufactured or produced by a dealer. Therefore a dealer who himself manufactures or produces any goods for sale is not liable if the sale price of goods manufactured or produced by him is less than Rs. 5,000; nor does he become liable if the turnover comprising the sale price of goods manufactured or produced by him and of other goods locally obtained exceeds Rs. 5,000 but does not exceed Rs. 25,000.—*AYODHYAPRASAD SUKLAL v. THE CROWN* [1951] 2 S.T.C. 44 (Nag.).

—The boiling of butter into ghee does not amount to a "process" within the meaning of section 5(1)(b) of the Bombay Sales Tax Act, 1946. The significance of the word "gross" before the word "turnover" in section 5(1) is that the turnover to be taken for the purpose of the section is without such deductions as are permissible under section 6 and nothing more. In the absence of anything in the section to justify the addition of the turnover as a manufacturer or a processor to the ordinary turnover falling under section 5(1)(c), they cannot be combined so as to make the dealer liable under section 5(1)(b) at the lower limit of Rs. 10,000. Consequently even assuming that the making of ghee out of butter amounts to a process, the turnover due to sale of such an article cannot be added to the amount of general turnover of a dealer falling under section 5(1)(c) in order to hold him liable under section 5(1)(b) at a lower limit.—*MOTILAL RAMCHANDRA OSWAL v. THE STATE OF BOMBAY* [1952] 3 S.T.C. (T.D.) 140.

User of goods manufactured in the further production of by-products—Whether amounts to utilisation within section 6(3)(1)(i) of the Saurashtra Sales Tax Ordinance, 1950.—*COMMISSIONER OF SALES TAX v. DHRANGADHRA CHEMICAL WORKS LTD.* [1956] 7 S.T.C. 513 (Sau.).

MATCHES

Bengal light matches—*Whether crackers, fireworks or matches.*—"Bengal light matches" are

understood in common parlance not as "fire-works" but as "matches". Entry 5 in the Schedule to the Saurashtra Sales Tax Ordinance could not therefore be interpreted so as to include "Bengal light matches".—COMMISSIONER OF SALES TAX, STATE OF SAURASHTRA *v.* RATILAL NANCHAND [1955] 6 S.T.C. 714 (Sau.).

MEAT

Dressed poultry—Whether meat.—COLLECTOR OF SALES TAX *v.* GAURIMAL MAHAJAN AND SONS [1959] 10 S.T.C. 452 (Bom.) (page 554 *supra*).

MEDICINAL PREPARATIONS

(See also MEDICINES)

Medicinal and toilet preparations containing alcohol—Whether State Government has power to levy sales tax on such preparations.—After the enactment of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the power of the State Government to levy excise duty under the C.P. and Berar Excise Act, 1915, on medicinal and toilet preparations containing alcohol terminated and such articles ceased to be leviable with excise duty under the Excise Act. Accordingly entry 32 in Schedule II of the C.P. and Berar Sales Tax Act, 1947, no longer applied to such preparations and the sale of such preparations was liable to sales tax. It is not necessary that duty should have been actually levied on the goods to attract the application of entry 32 of Schedule II of the C.P. and Berar Sales Tax Act, 1947. It is sufficient if there is power under the relevant Act to impose such a duty. Although the power of the State Government to impose excise duty on medicinal and toilet preparations containing alcohol has been taken away by entry 51 in List II of the Seventh Schedule of the Constitution, it does not affect its power to levy sales tax on such preparations which has been independently given to them by virtue of entry 54 in List II. *R. M. D. Chamarbaugwalla v. Union of India* [1957] (A.I.R. 1957 S.C. 628) referred to.—ALEMBIC DISTRIBUTORS LTD. AND ANOTHER *v.* ASSISTANT COMMISSIONER OF SALES TAX, JABALPUR [1962] 13 S.T.C. 64 (M.P.).

Drugs and toilet preparations containing alcohol—Whether entitled to exemption.—THE STANDARD DRUGS CO. *v.* STATE OF PUNJAB [1961] 12 S.T.C. 446 (Punj.).

Medicinal preparations containing alcohol—Whether entitled to exemption.—THE ALEMBIC DISTRIBUTING AGENCY *v.* STATE OF ANDHRA PRADESH [1961] 12 S.T.C. 15 (A.P.).

Maha Bhringraj Hair oil—Whether "toilet article" or "medicinal preparation".—COMMISSIONER OF SALES TAX *v.* SRI SADHNA AUSHADHALAYA [1963] 14 S.T.C. 813 (M.P.).

Spirituous medicinal preparations on which duty is imposed under Medicinal and Toilet Preparations (Excise Duties) Act, 1955—Whether exempt.—JAGANNATHAN *v.* SALES TAX OFFICER [1964] 15 S.T.C. 702 (Ker.).

Sales of medicinal and toilet preparations—Liability to sales tax.—DEPUTY COMMISSIONER OF AGRICULTURAL INCOME-TAX AND SALES TAX, SOUTH ZONE, QUILON, AND ANOTHER *v.* PHARMACEUTICALS AND CHEMICALS (TRAVANCORE) PRIVATE LTD. AND ANOTHER [1966] 17 S.T.C. 24 (Ker.).

Sale of goods on which duty is levied under Punjab Excise Act, 1914—Imposition of duty on medicinal preparations containing alcohol under Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955) which repealed the Excise Act—Whether such preparations entitled to exemption.—THE PUNJAB STATE *v.* SUKH DEV SARUP GUPTA [1966] 18 S.T.C. 427 (Punj.).

Medicinal preparations containing alcohol—Whether exempt after enactment of Medicinal and Toilet Preparations (Excise Duties) Act (16 of 1955).—VINO CHEMICAL & PHARMACEUTICAL WORKS *v.* THE SALES TAX OFFICER, RAIPUR, MADHYA PRADESH, AND ANOTHER [1966] 18 S.T.C. 466 (M.P.).

MEDICINES

(See also MEDICINAL PREPARATIONS and DRUG)

Tooth-powder—Whether "cosmetic or toilet requisite" or medicine—Rate of tax.—A tooth-powder used for cleaning the teeth is an article of "cosmetics or toilet requisites" falling within item 6 of Notification No. 905/X dated 31st March, 1956. The act of brushing one's teeth with tooth-paste or tooth-powder is not the same thing as taking or using medicine. The intention of the framers of the several notifications was to include all articles in the expression "cosmetics and toilet requisites" as are popularly regarded as articles falling within that category, but such of those articles as were intended to be taxed at different rates were separated and listed separately.—COMMISSIONER, SALES TAX, U.P. *v.* SARIN CHEMICAL LABORATORY [1969] 24 S.T.C. 406 (All.).

Medicines—Point of tax—Onus of proof that sale is by manufacturer or importer.—Section 3-A of the U.P. Sales Tax Act, 1948, is an exception to

section 3 and once an article is covered by Notification No. 3504/X dated 10th May, 1956, issued under section 3-A, its turnover is not liable to tax except when it is sold by the manufacturer or the importer. In a situation like this the onus would clearly lie upon the department to prove that a particular sale which is sought to be assessed under the notification is a sale by the importer or by the manufacturer, unlike the position that would prevail under section 3 where once a person is found to be a dealer, the onus would lie upon him to show that he is not liable to tax in respect of the turnover of a particular commodity.—GUPTA HOMEOPATHIC MEDICAL STORES *v.* COMMISSIONER OF SALES TAX, UTTAR PRADESH [1969] 24 S.T.C. 415 (All.).

MEMBERS' CLUB

(See CLUB)

MENS REA

(See OFFENCES)

MILK

Levy of sales tax on milk—Whether illegal after enactment of Act 52 of 1952—Exemption granted to sale of milk to actual consumers by co-operative societies and unions under G.O. Ms. No. 2333, Revenue, dated 7-9-1951—Whether continues in force after G.O. No. 2790, Revenue, dated 24-9-1953—Madras General Sales Tax Act (IX of 1939).—TADEPALLIGUDEM CO-OPERATIVE MILK SUPPLY SOCIETY LTD. *v.* THE GOVERNMENT OF ANDHRA [1959] 10 S.T.C. 26 (A.P.). See also under EXEMPTION pages 554-555.

MILL

“Mill” and “manufacture”—Meanings of—“Miller” in item 3-C, column (2), Schedule IV, Andhra Pradesh General Sales Tax Act (VI of 1957)—Whether includes both decortivating miller and oil miller.—Having regard to the meanings which, according to their common usages are given to the words “mill” and “manufacture” and even according to their dictionary meanings, the word “miller” appearing in item 3-C of column (2) of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, would mean both the decortivating miller and the oil miller. The legislative history also indicated that the Legislature had used the word “miller” in the provision to include both the decortivating as well as oil miller.—Y. ASWATHANARAYANA AND OTHERS *v.* THE DEPUTY COMMERCIAL TAX OFFICER, KADIRI, AND OTHERS [1964] 15 S.T.C. 795 (A.P.).

Groundnuts—“When purchased by a miller”—Meaning of—Whether miller should crush groundnut into oil to make him liable to tax.—Under the Andhra Pradesh General Sales Tax Act, 1957, after 1st October, 1961, groundnuts were liable to tax when purchased by a miller at the point of purchase by such miller—and after 1st August, 1963, by a miller other than a decortivating miller—and in all other cases at the point of purchase by the last dealer who bought in the State: *Held*, that with regard to purchases by millers who owned or worked groundnut oil mills, the words “when purchased by a miller” referred to the purchase by the first miller irrespective of the fact whether the said miller retained the goods either wholly or in part for the purpose of crushing or whether he merely sold them as an ordinary dealer. It was not the duty of the taxing authority to examine as to what he did with the stock or to wait till he thought of crushing them into oil. The second limb of column 2 of item 6 of the Third Schedule referred to dealers simpliciter and the Legislature never contemplated miller figuring as a mere dealer. The said limb could come into operation only in cases other than those covered by the first limb and therefore the interpretation put on the item did not come in conflict with section 15 of the Central Sales Tax Act, 1956.—THE STATE OF ANDHRA PRADESH *v.* LAKSHMI OIL MILLS, BHONGIR, AND OTHERS [1967] 20 S.T.C. 489 (A.P.).

—Purchase tax—Sale by decortivating miller to crushing miller—Payment of tax by crushing miller—Whether power to tax comes to an end—Whether tax can be levied on decortivating miller.—The assessee, a dealer in groundnuts, purchased groundnuts and decorticated them into kernel in a factory taken by him on lease and sold the kernel to crushing millers. For the year 1962-63, groundnuts were liable to tax under item 3-C of Schedule IV of the Andhra Pradesh General Sales Tax Act, 1957, “when purchased by a miller in the State at the point of purchase by the miller, and in all other cases at the point of purchase by the last dealer who buys it in the State.” The question was whether tax could be levied on the assessee on the purchases of groundnuts. The assessee contended that he was not liable to pay tax because the crushing millers, who purchased groundnuts from him, had already paid the tax for which he sought to adduce evidence in the form of affidavits. The Commercial Tax Officer rejected the contention of the assessee and held that “tax has to be collected at the right point of levy and from the right person only notwithstanding the fact that

some other dealers paid tax." *Held*, that while the Act as it stood originally regarded the first purchase as the point of tax on groundnuts, and the Amending Act of 1959 shifted the point to the last purchase, the Amending Act of 1961 did not fix any point for taxation. Therefore if the taxing authority levied the tax from any miller at any particular point of purchase, whether first, second or last, the power to tax came to an end. On a correct reading of item 3-C of Schedule IV, as amended by Act 26 of 1961 read with section 6 of the Andhra Pradesh General Sales Tax Act, 1957, there was no scope for any distinction between the first purchase and the last purchase among the millers who purchased groundnuts. Therefore if tax was collected from the crushing millers, who purchased the groundnuts from the assessee, tax could not be collected again from the assessee.—*JOWLI SUNKIAH & Co. v. COMMERCIAL TAX OFFICER, NANDYAL, AND ANOTHER* [1968] 21 S.T.C. 300 (A.P.).

—*Oil-seeds—Groundnuts—Whether stage of levy of tax on purchase of groundnuts uncertain—Whether provision contravenes section 15(a), Central Act—Classification of dealers into millers and other dealers—Whether discriminatory—"Sale or purchase price"—Method of computation—Whether declared goods liable to additional tax—"Subject to" in section 15(a), Central Act—Meaning of.*—The petitioners carrying on business in groundnuts, which, being oil-seeds, are declared goods taxable at the point of purchase by the miller and at the point of last purchase by the dealer other than miller, under item 6 of Schedule III to the Andhra Pradesh General Sales Tax Act, 1957, filed writ petitions in the High Court contending (1) that tax on groundnuts is uncertain as to the stage of levy, resulting in levy at more than one stage in violation of section 15(a) of the Central Sales Tax Act, 1956, (2) that the classification of dealers as millers and other dealers is discriminatory and unreasonable and violates Article 14 of the Constitution of India, and (3) that the levy of additional turnover tax on groundnuts is opposed to section 15(a) of the Central Sales Tax Act, 1956: *Held*, (1) that the Legislature has intended to fix only a single point of levy on groundnuts having regard to the class of dealers who are likely to deal with these goods. The Legislature assumed that when groundnuts are purchased by a miller, he does so only for crushing, and when a dealer purchases groundnuts, it is only for resale, either in the State or in the course of inter-State trade and accordingly made a distinction between a miller and a dealer in item 6 of Schedule III to

the Andhra Pradesh Act. In the case of a miller it is the first miller alone that will be liable to tax even though he sells the goods again as a dealer without crushing it into oil. When the groundnuts are crushed into oil by the miller, there is no question of purchase by any other person from him and in the case of other dealers, it is the purchase by the last dealer. In both cases, the levy is, in effect, on the last purchase alone before the goods lose their identity as a taxable commodity. It follows that the levy is only at one stage and the question of power being exhausted as soon as the point of levy has been prescribed in the first limb, does not arise; (2) that the Andhra Pradesh General Sales Tax Act has fixed a definite stage of levy on groundnuts in item 6 of Schedule III which is neither ambiguous nor uncertain nor admits of any difficulty in ascertaining with precision who a "miller" is and who a "dealer other than a miller" is. If millers cease to act as millers and become dealers or if dealers cease to act as such and become millers, it is not the law that is uncertain but it is the miller or the dealer that is fickle and acts, perhaps due to exigencies of his business, in a way not contemplated by the Legislature; (3) that the classification of assessees into "millers" and "dealers" in item 6 of Schedule III by the Legislature is neither arbitrary nor unreasonable nor can it be said that there is no nexus between the classification and the object sought to be achieved, *viz.*, to tax declared goods at one point and before they cease to be exigible to tax either by reason of having been crushed into oil or by leaving the State, having regard to the assumption of the Legislature with regard to the functions of a miller and a dealer respectively; (4) that the intention of Parliament in using the words "sale or purchase price" in section 15(a) of the Central Act is that while computing the turnover under the State Act, the sale or purchase price has to be arrived at in accordance with the definition of sale price given in section 2(h) of the Central Act. As the turnover under the Andhra Pradesh Act, on which turnover tax is levied, would not only include sale or purchase price but also other matters which the Central Act has not included in the definition of "sale price" under section 2(h) of the Central Act, there is a likelihood of tax on groundnuts exceeding the maximum prescribed in section 15(a) of the Central Act. But, the whole entry is not liable to be struck down but only the rate of tax in the State Act would *pro tanto* stand modified, so as not to exceed the maximum. The words "subject to" in section 15(a) of the Central Act would necessarily imply that the

power to impose tax is restricted to that extent and nothing more; (5) that section 5-A of the Andhra Pradesh Act levying additional turnover tax of $\frac{1}{4}$ per cent. is not applicable to declared goods and is not repugnant to section 15(a) of the Central Act. [The Court accordingly directed that the tax payable under item 6 of Schedule III of the Andhra Pradesh General Sales Tax Act, 1957, in respect of the sale or purchase of groundnuts should not, in any case, exceed the tax at the maximum rate of three per cent. on the sale or purchase price in accordance with the definition of the sale price (which would also include the purchase price) contained in the Central Sales Tax Act, 1956.] There is nothing in the judgment of the Supreme Court in *Bhawani Cotton Mills v. State of Punjab* [1967] (20 S.T.C. 290) which militates against the interpretation given to item 6 of Schedule III in *State of Andhra Pradesh v. Lakshmi Oil Mills* [1967] (20 S.T.C. 489). —RADHAKRISHNA AND CO. v. STATE OF ANDHRA PRADESH AND ANOTHER [1969] 24 S.T.C. 320 (A.P.).

Millers—Millers who are not dealers but milling rice for hire—Provisions requiring registration and maintenance of registers—Validity—Whether *ultra vires* State Legislature—Whether unreasonable restrictions on right to carry on business or hold property.—N. PULLAYYA v. THE GOVERNMENT OF ANDHRA PRADESH [1968] 21 S.T.C. 291 (A.P.).

MILLET

Milllets—Whether include wheat.—The word “milllets” does not include wheat and therefore dealers in wheat cannot have the benefit of the single point tax contemplated by Schedule III to the Andhra Pradesh General Sales Tax Act, 1957. Hence wheat is subject to multiple point tax.—PULLAGURA SUBBAIAH CHETTY AND BROTHERS v. THE STATE OF ANDHRA PRADESH [1962] 13 S.T.C. 735 (A.P.).

MISTAKE OF LAW

Money paid voluntarily under mistake of law.—The plaintiffs claimed a declaration that one of the products of their manufacture, “Mobo Rocker Swing”, was not liable to purchase tax on the ground that it was a “swing” within the meaning of that word as used in the exempting provision of the United Kingdom Finance Act, 1947, Schedule V. The defendants, the Commissioners of Customs and Excise, contended that tax was leviable. While this action was pending the plaintiffs paid the defendants the amount of purchase tax which would be found to be due by

them if they were held liable to pay the tax. Subsequently the High Court made a declaration in the plaintiffs' favour and gave them liberty to apply for an account of the purchase tax already paid by them. The plaintiffs by a summons asked, under the liberty to apply, for an account of the purchase tax which they had paid, and for repayment of the amount found due. The defendants resisted the claim on the ground that the amount of the tax was paid by the plaintiffs voluntarily under a mistake of law and was therefore irrecoverable: *Held*, (1) that by the Crown Proceedings Act, 1947, section 21(1), the defendants were placed in the same position as the ordinary subjects of the Crown and they could in appropriate cases refuse to refund money paid to them voluntarily under a mistake of law; (2) that as the intention of the plaintiffs in paying the money and the intention of the defendants in receiving it were identical, *viz.*, that the money should be repaid to the plaintiffs if the action resulted in their favour, the plaintiffs were entitled to the repayment of the amount. In the course of the judgment VAISEY, J., said as follows:—“The question here must, in my judgment, be put from a somewhat different angle, and I ask myself, first, with what intention the plaintiffs paid the money, and secondly, with what intention the defendants received it? If the intention was the same on both sides, the result, in my judgment, was that an agreement was made between the parties by implication. The intention of the plaintiffs was, to my mind, clear. They expected to recover the money if they won their action. What was the intention of the defendants? It is irrelevant to speculate on what, if anything, was in the mind of the clerk or other subordinate officer who actually received the money or in the mind of the officer who paid it into the bank to the defendants' credit and I must assume the existence of some person in the defendants' employment who accepted and appropriated the money with a full knowledge of all the facts, particularly the discussion which had preceded the institution of the action and the pending of the action itself, who knew and realised that the right of the defendants to receive the money was at the moment *sub judice*, and, indeed on the point of coming before this Court for decision. What would that hypothetical person have thought about it? In my judgment, he would inevitably have come to the conclusion, as a matter of necessary inference, that the plaintiffs were paying and the defendants accepting the money subject to repayment if the action resulted in the plaintiffs' favour. If, however, he had entertained any doubt on the matter, I feel sure that he would as a matter

of courtesy have refused to accept the money until the position had been made clear to him. What is, to my mind, incredible is that he could ever have supposed that the money was being either paid by the plaintiffs or received by the defendants on the footing that the defendants were to keep it in any event. I come, therefore, to the conclusion that the intentions of the plaintiffs and the defendants were identical. In other words, I find that there was an agreement. An alternative short answer to the problem might be that the plaintiffs cannot possibly be said to have been under a mistake as to the law at a time when they were in the very act of asking the Court to tell them what the law was. I need not, however, enlarge on this point. By the Crown Proceedings Act, 1947, section 21(1), the defendants are placed in the same position as the ordinary subjects of the Crown and I see no reason why they should not in appropriate cases refuse to refund money paid to them voluntarily under a mistake of law as the revenue authorities were held to be entitled to do in the case of *William Whitley, Ltd. v. R.* (1909) 101 L.T. 741 and *National Pari-Mutual Assn. Ltd. v. R.* (1930) 47 T.L.R. 110. At the same time I cannot help feeling that the defence is one which ought to be used with great discretion, and that for two reasons. First, because the defendants, being an emanation of the Crown, which is the source and fountain of justice, are, in my opinion, bound to maintain the highest standards of probity and fair dealing comparable with those which the Courts, which derive their authority from the same source and fountain, impose on the officers under their control: See *Re Tyler* [1907] 1 K. B. 865. Secondly, because the taxpayer, who is too often tempted to evade his liability and to keep in his own pocket money which he ought to have paid to the revenue, will find too ready an excuse in the plea that the revenue authorities will, if they can, keep in their coffers, if they can get it there, money which the taxpayer was under no obligation to pay to them and they had no right to demand. Although such an excuse would have no validity in either a Court of law or in the forum of the taxpayer's own conscience, I think that, in the public interest, grounds for proffering it should, so far as possible, be avoided. While the defendants' resistance to the plaintiffs' claim in the present case has obliged me to make these general observations, I do not forget or overlook the policy of courteous consideration adopted, as a rule, by government departments in their dealings with members of the public, so that any deviation or apparent deviation from it is rightly regarded as exceptional. I order the defendants to pay to

the plaintiffs the agreed sum without interest, and also their costs of this application.—*SEBEL PRODUCTS LTD. v. COMMISSIONERS OF CUSTOMS AND EXCISE* [1949] 1 All E. R. 729.

The following observations of LATHAM, C. J., of the High Court of Australia in *Werrin v. The Commonwealth of Australia* [1938] (59 C.L.R. 150) are also instructive:—"The general rule as stated in Leake on Contracts, 6th Edition, page 63, is that money paid voluntarily, that is to say, without compulsion or extortion or undue influence and with a knowledge of all the facts, cannot be recovered although paid without any consideration. In this case there was no force or fraud or fear, or duress of goods or of person. There was not even a threat of ordinary legal proceedings to recover the amount alleged to be due, though if there had been a threat of such proceedings I do not think that that would have affected the matter. See *Maskell v. Horner* ([1915] 3 K. B. 106) at page 109 *per* ROWLATT, J., and at pages 121-122 *per* Reading, L.C.J. The present is not a case where a person is entitled to the performance of a duty by a public officer and where the public officer insists upon receiving an additional payment as the price of performing his duty as in *Morgan v. Palmer* ([1824] 2 B. and C. 729), or *Waterhouse v. Keen* ([1825] 4 B. and C. 208) or *Steel v. Williams* ([1853] 8 Ex. 625) or *Payne v. The Queen* (26 T.L.R. 705). The case cannot, in my opinion, be distinguished from *Whitley (Ltd.) v. The King* (101 L.T. 741; 26 T.L.R. 19). In that case the plaintiff sued for the recovery of amounts paid by way of duties under the Inland Revenue Act, 1899, which were demanded in respect of certain man servants who were in their employment. The plaintiff objected to pay and paid only under protest, being told that in the opinion of the Commissioners the duties were payable and that if they were not paid proceedings would be taken for penalties. At last, in the year 1906, the plaintiff refused to pay and proceedings were taken which were ultimately decided in its favour. The plaintiff then claimed to recover the sums which it had paid in respect of duties for six prior years. WALTON, J., in a judgment which is much more fully reported in 101 L.T. than in 26 T.L.R. examined the whole question and decided against the plaintiff. He said 'there is no doubt as to the general rule stated in Leake on Contracts to which I have already referred, that money paid voluntarily—that is to say, without compulsion or extortion or undue influence, and, of course, I may add without any fraud on the part of the person to whom it is paid, and with knowledge of all the facts though

paid without any consideration, or in discharge of a claim not due, or a claim which might have been successfully resisted, cannot be recovered back. There is no doubt, and no question raised, that that is an accurate statement of the general rule. But, on the other hand, if the payment is not voluntary a different rule applies which may be stated, perhaps, as it is stated in Leake on Contracts (5th edition, page 61), that money extorted by a person for doing what he is legally bound to do without payment, or for a duty which he fails to perform, may be recovered back, as in the cases of illegal or excessive fees and payments extorted in the discharge of an office; and money paid under duress either of the person or of goods may be recovered back (pages 58, 59). In all those cases the payment is not voluntary. The question which I have to decide here is whether the payments made during the years which I have mentioned—from 1900 to 1905—were or were not voluntary payments. Was there any duress here? The only suggested evidence of duress or compulsion of any kind was that the Commissioner had demanded the duties and had threatened to take proceedings for penalties if they were not paid. The learned Judge had no doubt that the facts did not show any compulsion or duress or extortion *colore officii*. The principles laid down in this case are in my opinion precisely applicable to the present case and they show that the plaintiff cannot succeed. "In other very similar and more recent case, namely *National Pari-Mutual Association Ltd. v. The King* (47 T.L.R. 110), taxes had been paid by the plaintiff in the belief that they were properly payable. The House of Lords subsequently decided that tax was not payable in such a case as that of the plaintiff. The plaintiff failed in an action to recover moneys paid for the simple reason that the mistake which the plaintiff had made was one of law. In each of these cases the money was paid, as in the present case, to the Crown. In *Henderson v. The Folkestone Waterworks Coy.* (1 T.L.R. 329) money was paid under mistake of law to a water company and the same principles were applied, the money having been paid voluntarily could not be recovered. The principle appears to me to be quite clear that if a person, instead of contesting a claim, elects to pay money in order to discharge it, he cannot thereafter, because he finds out that he might have successfully contested the claim, recover the money which he so paid merely on the ground that he made a mistake of law. The same principles have been applied to similar cases in New Zealand in *Julian v. Mayor of Auckland* ([1927] N.Z. Gaz. L.R. 359) and in Canada in *Cushen v. City of Hamilton* (4 Ont. L.R. 265) as

well as in the Victorian cases which were cited in argument; I refer only to *Payne v. The Queen* (26 V.L.R. 705) and *Kelly v. The King* (26 V.L.R. 522, at page 532). In my opinion these authorities are conclusive as against the plaintiff." These observations are quoted in Irving's Commonwealth Sales Tax Law and Practice, pages 137-138.

Money paid under mutual mistake of law—Whether refundable.—"It is pointed out that all the States are realising sales tax in respect of sales or purchases of goods where the goods are actually delivered for consumption within their respective boundaries on the faith of our previous decision [*State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133)] and a reversal of that decision will upset the economy of the States and will indeed render them liable to refund moneys already collected by them as taxes. This circumstance, it is pressed upon us, should alone deter us from differing from the previous decision. We are not impressed by this argument. It has not yet been decided by this Court that moneys paid under a mutual mistake of law induced by a wrong judicial interpretation of a statute or the Constitution must necessarily be refundable as money had and received. If, as contended, moneys so paid are in law refundable the States cannot complain any more than a private individual in similar circumstances could do. Finally, if the State economy is upset the appeal must be to Parliament which under Article 286(2) itself has ample power to make suitable legislation."—DAS, J., in the majority judgment in *BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR* [1955] 6 S.T.C. 446 (S.C.).

—"If we are now to hold that the view taken in *The State of Bombay v. The United Motors (India) Ltd.* [1953] (4 S.T.C. 133) is erroneous, the consequences will be to render the amended provisions inoperative and the collections of taxes made thereunder illegal. The States will then be not merely powerless to tax sales falling within the Explanation in future, but will have actually to refund whatever they might have collected in the past. I can see no end to the chaos, confusion and trouble that must ensue on such a decision—a situation that can be retrieved only by Parliament removing Article 286(2) out of the scene with retrospective operation, and all this, to benefit not the consumers who are the persons really affected but the sellers who are only statutory middlemen for collection, some of whom are stated to have collected sales tax from purchasers outside their States. I consider it wholly inexpedient that our power of reconsideration

should be exercised for that end. This, of course, is apart from my conclusion that on a correct interpretation of the Explanation and Article 286(2), the respondents have the power to tax. In the result, this point must be held against the appellant."—VENKATARAMA AYYAR, J., in *BENGAL IMMUNITY CO., LTD. v. THE STATE OF BIHAR* [1955] 6 S.T.C. 446 (S.C.).

Ignorance of law.—Section 15(a) of the Madras General Sales Tax Act (IX of 1939) provided that "any person who wilfully submits an untrue return or fails to submit a return as required by the provisions of this Act.....shall.....be liable to a fine." An accused contended that section 15 did not apply to him inasmuch as he did not know what the rules under the Act were and his failure to submit a return was not therefore, wilful: *Held*, that in order to constitute an offence under this section it is not necessary that the failure to submit a return should be wilful. Moreover every person is supposed to know what the law is, and if he fails to act in accordance with law, then he has to suffer the consequences.—SWAMINATHA AYYAR, *In re* [1941] 1 S.T.C. 101 (Mad.).

Ignorance of rules.—Ignorance of the rules requiring the taking out of a licence cannot be a ground under which exemption from tax can be claimed.—C. D. GOVINDA RAO v. FIRST MEMBER, BOARD OF REVENUE, AND ANOTHER [1954] 5 S.T.C. 121 (Trav.-Co.).

Money representing sales tax collected by dealer under mistake of law—Suit for refund.—A contract cannot be reopened so long as the mistake was not in the making of the contract but in some act or circumstance anterior to the making of the contract. The plaintiff placed an order with a sub-dealer at Amravati for the delivery of a car at Bombay and agreed to pay the price at the time of delivery. The price of the car as stated in the order form and agreed to be paid by the plaintiff was Rs. 9,725 which included sales tax of Rs. 657. The plaintiff took delivery of the car and paid the price of Rs. 9,725. The defendant also paid the sales tax of Rs. 657 into the treasury. Subsequently the Supreme Court held in the *Bengal Immunity* case [1955] (6 S.T.C. 446) that the levy of tax on such transactions was illegal. The plaintiff thereupon instituted a suit against the defendant for refund of sales tax collected from him: *Held*, (1) that the contract was only to pay Rs. 9,725 and that a suit for an item of accounting which preceded the making of the contract could not lie; that there was no mistake as to a matter of fact

essential to the agreement as required by section 20 of the Indian Contract Act; the mistake, if at all, was only as to the law on the subject; (2) that the Sales Tax Laws Validation Ordinance, 1956, which was enacted during the pendency of the application for revision had validated the levy and collection of such tax retrospectively; (3) that the suit was therefore not maintainable. Whenever a sale attracts sales tax that tax presumably affects the price which the seller who is liable to pay the tax demands, but it does not cease to be the price which the buyer has to pay even if the price is expressed to be X plus sales tax.—GADRE MOTORS v. RADHAKRISHNA [1956] 7 S.T.C. 809 (Nag.).

Suit for levy of sales tax the levy of which was declared illegal—Maintainability and limitation.—See *SUIT infra*.

Tax paid under provision of law subsequently held to be unconstitutional—Liability of Government to refund tax collected.—The word "person" in section 72 of the Indian Contract Act, 1872, includes the State Government. The assessee doing business in forward contracts paid without protest under the U. P. Sales Tax Act, 1948, sales tax assessed on those contracts but the Supreme Court subsequently held that the provisions imposing sales tax on forward contracts were *ultra vires* the State Legislature. The assessee thereupon applied for refund of the tax paid: *Held*, that section 72 of the Indian Contract Act applies even where the mistake under which the money has been paid is one of law and therefore the assessee was entitled to the refund.—STATE OF UTTAR PRADESH AND OTHERS v. KANHAIYA LAL MAKUND LAL SARRAF [1956] 7 S.T.C. 579 (All.) affirmed on appeal to Supreme Court. See page 764 *infra*.

Tax paid under mistaken notion of law—Whether recoverable.—Payment of tax upon the demand of an officer *colore officii* or acting under the colour of authority is an involuntary payment. Therefore payment of sales tax by an assessee in pursuance of a notice of demand is not a voluntary payment and the question of protest or no protest is immaterial. The word "mistake" in section 72 of the Indian Contract Act includes a mistake of law. Section 72 does not conflict with the provisions of section 21. Therefore money paid as sales tax under a mistaken notion of law is recoverable.—INDIAN STEEL AND WIRE PRODUCTS LTD. v. THE SUPERINTENDENT OF COMMERCIAL TAXES, SINGHBHUM CIRCLE, AND OTHERS [1956] 7 S.T.C. 776 (Pat.).

Tax paid under mistake of law—Whether should be refunded.—The right of a dealer to apply for

refund of sales tax paid under the Orissa Sales Tax Act, 1947, is found within the four corners of section 14 of the Act and the only restriction on the exercise of that right is the law of limitation laid down in the proviso to that section. The petitioner paid sales tax on certain inter-State sales. Subsequently the Supreme Court held in *State of Bombay v. United Motors (India) Ltd.* [1953] (4 S.T.C. 133) that such sales were not liable to sales tax. The petitioner thereupon applied for refund of tax under section 14 of the Act: *Held*, that unless the application for refund was time-barred, the tax must be refunded to the petitioners. The mere fact that the assessment order was not challenged by way of appeal or revision under the other provisions of the Act was immaterial. The powers of the High Court under Article 226 of the Constitution of India cannot in any way be circumscribed by an Act of a Legislature in India and consequently merely because some sort of finality is given to an order under any statute the jurisdiction of the High Court under Article 226 cannot be curtailed. Section 9-B(3) is in the nature of a procedural provision which requires every registered dealer to deposit in the treasury any amount collected by him by way of tax, whether any tax is legally payable or not. The word "deposit" in the section conveys the idea that no right as between the depositor and the Government is finally decided. The money merely remains with the Government until the rights of the parties are decided by appropriate provisions either under the Sales Tax Act or under any other relevant law. Section 14 is not subject to section 9-B(3). Reassessment under section 12(7) stands on a different footing from the original assessment under section 12(1) and for the purpose of limitation under section 14, these two dates must be considered separately. If the amount reassessed alone is found to be not due whereas the amount assessed is found to be due the date of reassessment will be the starting point for limitation; whereas if the amount originally assessed be held to be not due the date of assessment should be the starting point.—*ORIENT PAPER MILLS LTD. v. THE STATE OF ORISSA AND OTHERS* [1957] 8 S.T.C. 749 (Ori.) reversed by Supreme Court. See page 765 *infra*.

Tax paid under provision of law subsequently held to be unconstitutional—Liability of Government to refund tax collected.—There is no warrant for ascribing any limited meaning to the word "mistake" in section 72 of the Indian Contract Act, 1872, and it is wide enough to cover not only a mistake of fact but also a mistake of law.

There is no conflict between the provisions of section 72 on the one hand and sections 21 and 22 on the other and the true principle is that if one party under a mistake, whether of fact or law, pays to another party money which is not due by contract or otherwise that money must be repaid. The mistake lies in thinking that the money paid was due when in fact it was not due and that mistake, if established, entitles the party paying the money to recover it back from the party receiving the same. No distinction in this respect can be made in respect of a tax liability and any other liability and therefore tax paid under the U.P. Sales Tax Act, 1948, by a mistake of law can also be recovered. On a true interpretation of section 72 the only two circumstances that entitle the party to recover the money back are that the money must have been paid by mistake or under coercion. If mistake either of law or of fact is established, he is entitled to recover the moneys and the party receiving the same is bound to repay or return them irrespective of any consideration whether the moneys had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. If, on the other hand, neither mistake of law nor of fact is established, the party may rely upon the fact of the moneys having been paid under coercion in order to entitle him to the relief claimed and it is in that position that it becomes relevant to consider whether the payment has been a voluntary payment or a payment under coercion. No question of estoppel can ever arise where both the parties are labouring under the mistake of law and one party is not more to blame than the other. The fact that the State has not retained the moneys paid as tax but has spent them away in the ordinary course of business of the State would not make any difference to the position. No such equitable considerations can be imported when the terms of section 72 are clear and unambiguous. The assessee-firm doing business in forward contracts had deposited under the U.P. Sales Tax Act, 1948, certain sums towards sales tax on such contracts and the Sales Tax Officer by an assessment order appropriated the sums towards the sales tax liability of the assessee. Subsequently the High Court held that the provisions imposing sales tax on forward contracts were *ultra vires* the State Legislature. The assessee thereupon applied for refund of the tax paid but the Commissioner refused to refund the same. The Supreme Court later on confirmed the decision of the High Court: *Held*, that the money was paid under a mistake of law and the assessee was therefore entitled to a refund of the same under section 72 of the

Indian Contract Act. If the terms of the section are plain and unambiguous, the court cannot resort to the position in law as it obtained in England or in other countries when the statute was enacted by the Legislature. Such recourse would be permissible only if there was any latent or patent ambiguity and the courts were required to find out what was the true intendment of the Legislature. Where, however, the terms of the statute do not admit of any such ambiguity, it is the clear duty of the courts to construe the plain terms of the statute and give them their legal effect. Decision of the Allahabad High Court in *State of Uttar Pradesh and Others v. Kanhaiya Lal Mukund Lal Sarraf* [1956] (7 S.T.C. 579) affirmed.—THE SALES TAX OFFICER, BANARAS, AND OTHERS *v.* KANHAIYA LAL MUKUND LAL SARAF AND OTHERS [1958] 9 S.T.C. 747 (S.C.).

Tax paid under provision of law subsequently held to be unconstitutional—Liability of Government to refund where (a) dealer has collected it from customer, (b) he has debited it against the account of customer but has not recovered it from him, and (c) he has not collected it from customer.—A person, who has paid money to another by mistake, be it of fact or law, is entitled to get back the money under section 72 of the Indian Contract Act, 1872. His title to get back the money may, however, be lost on account of certain circumstances like estoppel, waiver, limitation or the like, but no equitable consideration can take away his title to the refund of the money. The assessee doing business in forward contracts were assessed to sales tax under the U. P. Sales Tax Act, 1948, but the High Court subsequently held that the provisions imposing sales tax on forward contracts were *ultra vires* the State Legislature and the Supreme Court affirmed this decision. The assessee then applied for refund of the amount of sales tax which they had deposited in the Government treasury. The Sales Tax Department disputed its liability to refund the amount and the following questions were raised for the decision of the High Court:—“(1) Whether any sales tax which has been deposited by any dealer on forward transactions before or after the issue of notice of demand is refundable on the ground of the tax having been declared *ultra vires*, even when the tax was voluntarily paid or realised without the assistance of any coercive process in all or any of the following cases: (a) where the taxes have been paid by the dealers from their own pockets without recovering the amounts from the customers, (b) where the amounts of taxes have been debited in the account by the dealers against the customers but the amounts

have not been recovered, (c) in view of the provisions of section 8-A(4) of the Sales Tax Act where the taxes have actually been recovered by the dealers from the customers. (2) If the taxes are refundable in all or any of the cases mentioned in the first question, what is the period within which the refund can be claimed? (3) Whether in the circumstances of the case, section 8-A(4) of the U. P. Sales Tax Act is at all applicable and is not *ultra vires* of the U. P. Legislature?” Counsel for both the parties agreed that there was no period of limitation provided for a claim for the refund by an assessee under the U. P. Sales Tax Act: *Held*, that the taxes deposited by the assessee were refundable in all the three cases and that section 8-A(4) was not applicable to them. What sub-section (4) of section 8-A contemplates to be deposited is the amount which a person collects as tax on a transaction which is in reality a sale transaction and not what he collects as a tax on a transaction treating it to be a sale transaction. The expression “as tax on sale of any goods” simply means that the amount realised should be realised as a tax. Consequently the amount realised by a dealer-assessee as tax from the customer in connection with a forward contract cannot be said to be an amount realised as tax on sale of any goods and therefore such an amount is not covered by the provisions of section 8-A(4). *Sales Tax Officer, Banaras, and Others v. Kanhaiya Lal Mukund Lal Saraf* [1958] (9 S.T.C. 747) followed.—THE SALES TAX COMMISSIONER, U. P. *v.* SADA SUKH VYOPAR MANDAL [1959] 10 S.T.C. 57 (All.).

—The power to legislate with respect to sales tax comprehends the power to impose the tax, to prescribe the machinery for collecting the tax, to designate the officers by whom the liability may be enforced and to prescribe the authority, obligations and indemnity of those officers. The diverse heads of legislation in the Schedule to the Constitution demarcate the periphery of legislative competence and include all matters which are ancillary or subsidiary to the primary head. The State Legislature has therefore the power of granting refund of tax improperly or illegally collected and to declare that refund can be claimed only by the person from whom the dealer has actually realised the amounts by way of sales tax. The assessee, who had collected sales tax on inter-State sales for the five quarters ending 31st March, 1951, were assessed to tax on those sales and they paid the amount to the Government. Subsequently the Supreme Court delivered judgment in *State of Bombay v. United Motors (India) Ltd. and Others* ([1953] S.C.R. 1069;

4 S.T.C. 133). The assessee thereupon applied for refund of tax under section 14 of the Orissa Sales Tax Act, 1947, which was refused by the Sales Tax Authorities. The assessee then applied to the High Court under Article 226 of the Constitution and the High Court granted them refund of tax for the last three quarters only. The State of Orissa and the assessee appealed to the Supreme Court. In the meanwhile the State Legislature passed the Orissa Sales Tax (Amendment) Act (28 of 1958) retrospectively amending the Act by inserting a new section 14A, which provided that a refund of such amount or any part thereof could be claimed only by the person from whom such person or dealer had actually realised such amount whether by way of sales tax or otherwise and the period of limitation provided in the proviso to section 14 should apply to such claims. The assessee contended that the Amendment Act was beyond the competence of the State Legislature and that, in any event, it was void, because it imposed an unreasonable restriction upon the assessee's fundamental right guaranteed under Article 19(1)(f) of the Constitution: *Held*, (1) that the State Legislature was competent to pass the Act under item 54 of List II of Schedule VII to the Constitution; (2) that the restriction on the right of the assessee to obtain refund was lawfully circumscribed in the interest of the general public and therefore the Act was not void; (3) that the assessee would not be exposed to any enforceable claims at the instance of the purchasers to refund the tax collected by them if they had deposited it with the State in discharge of the statutory obligation incurred by them. Decision of the High Court in *Orient Paper Mills Ltd. v. The State of Orissa* [1957] (8 S.T.C. 749) allowing assessee's claim, reversed.—*THE ORIENT PAPER MILLS LTD. v. THE STATE OF ORISSA AND OTHERS* [1961] 12 S.T.C. 357 (S.C.).

Tax paid under mistake of law—Whether can be recovered.—The word "mistake" in section 72 of the Indian Contract Act is wide enough to cover not only a mistake of fact but also a mistake of law. Tax paid under a mistake of law can therefore be recovered.—*MESSRS MOOSA MOHAMMAD SONS v. STATE OF ANDHRA PRADESH* [1960] 11 S.T.C. 460 (A.P.).

Mistake of law—Indian Contract Act—Whether covers payments made under mistake of law.—Section 72 of the Indian Contract Act, 1872, covers payments made under a mistake of law as well.—*K. S. VENKATARAMAN & Co. LTD. v. STATE OF MADRAS* [1961] 12 S.T.C. 138 (Mad.). There was an appeal to the Supreme Court against this decision. See [1966] 17 S.T.C. 418 (S.C.).

—Section 72 of the Contract Act, 1872, is not confined to mistakes of fact but takes in mistakes of law also. That section however does not prescribe the procedure or the forum for enforcing that right. It is not in any way inconsistent with the concept of exclusion of jurisdiction of civil courts in certain contingencies.—*STATE OF ANDHRA PRADESH v. FIRM OF ILLUR SUBBAYYA CHETTY AND SONS* [1961] 12 S.T.C. 257 (A.P.) (F.B.).

Tax paid under provision of law subsequently held to be ultra vires.—Payment by an assessee of a tax, which is subsequently declared to be *ultra vires* must be regarded as a payment made under mistake and the party receiving the same is bound to return the amount of tax irrespective of any consideration whether the moneys have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the like.—*BHAILAL BHAI v. STATE OF M. P. AND ANOTHER* [1960] 11 S.T.C. 511 (M.P.). On appeal to Supreme Court see below:—

Tax paid under provision of law subsequently held to be unconstitutional—Whether can be ordered to be refunded in petition under Article 226.—The High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law. The special remedy provided in Article 226 is however not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. The power to give relief under Article 226 is a discretionary power and this is specially true in the case of power to issue writs in the nature of *mandamus*. Where a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. As a general rule it may be stated that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of *mandamus*. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for

raises a *prima facie* triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of *mandamus* for such payment. The maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.—THE STATE OF MADHYA PRADESH AND ANOTHER v. BHAILAL BHAI AND OTHERS [1964] 15 S.T.C. 450 (S.C.).

Mistake of law—Refund—Sale outside State—Question not raised during assessment—Subsequent claim that sales tax was paid under mistake of law—Duty of State to refund—Limitation.—Money paid under a mistake of law comes within the word “mistake” in section 72 of the Contract Act, and there is no question of estoppel when the mistake of law is common to both the assessee and the taxing authority. Where the assessee does not raise the question that the relevant sales were outside the taxing State and were therefore exempt under Article 286(1)(a) of the Constitution (as it then was), the Sales Tax Officer has no occasion to consider it, and sales tax is levied by mistake of law, it is ordinarily the duty of the State, subject to any provision of law relating to sales tax, to refund the tax. If refund is not made, remedy through court is open, subject to the same restriction and also to the bar of limitation under article 96 of the Limitation Act, 1908, namely, 3 years from the date when the mistake becomes known to the person who has made the payment by mistake. It is the duty of the State to investigate the facts when the mistake is brought to its notice and to make a refund if the mistake is proved and the claim is made within the period of limitation. *Sales Tax Officer v. Kanhaiya Lal Makund Lal Saraf* [1958] (9 S.T.C. 747; [1959] S.C.R. 1350) and *The State of Madhya Pradesh v. Bhailal Bhai* [1964] (15 S.T.C. 450; A.I.R. 1964 S.C. 1006) followed. [Their Lordships called for the following findings from the Sales Tax Officer in this case: (i) whether the sales with respect to which sales tax amounting to Rs. 54,375-5-0 was levied were outside the State and were therefore, exempt under Article 286(1)(a) as it then was; and (ii) whether the writ petition was within 3 years of the date on which the

mistake first became known to the respondent so that a suit on that date preferred would not be barred under article 96 of the Limitation Act, 1908.]—THE STATE OF KERALA v. ALUMINIUM INDUSTRIES LTD. [1965] 16 S.T.C. 689 (S.C.).

Tax assessed and paid by mistake—Suit for recovery—Whether barred—Limitation—Sales Tax Authorities—Scope of jurisdiction.—Per SUBBA RAO, WANCHOO and SIKRI, JJ. (SHAH and RAMASWAMI, JJ., dissenting)—If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a civil court in that regard. But an authority created by a statute cannot question the *vires* of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute, which is *ultra vires*, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would lie in a civil court. The expression “under this Act” in section 18-A of the Madras General Sales Tax Act, 1939, refers both to procedural and substantive provisions of the Act. Therefore any assessment made under an *ultra vires* provision of the Act cannot be said to be made under the Act and section 18-A would not be a bar to the maintainability of a suit for refund of the amounts paid in respect of such an assessment. The procedural machinery under the Act can be utilised only to decide disputes that arise under the substantive provisions of the Act, which are not *ultra vires*. *Per Curiam*—A suit for the recovery of the amounts paid under a mistake of law is governed by article 96 of the Indian Limitation Act and the period of 3 years prescribed by that article commences to run from the date when the mistake becomes known. The appellant-company carrying on the business of building contractors was assessed to sales tax under the Madras General Sales Tax Act, 1939, during the years 1948-49 to 1952-53 on the basis that the contracts executed by them were works contracts. On April 5, 1954, the Madras High Court held in *Gannon Dunkerley & Co. v. State of Madras* [1954] (5 S.T.C. 216) that the relevant provisions of the Act empowering the State of Madras to assess indivisible building contracts to sales tax were *ultra vires* the powers of the State

Legislature. The appellant issued a notice to the State of Madras under section 80 of the Code of Civil Procedure claiming refund of the amounts collected from them, and, as the demand was not complied with, filed a suit in the City Civil Court on March 23, 1955, for recovery of the amount of taxes illegally levied and collected from them during those years, on the grounds: (i) that the relevant provisions of the Act empowering the Sales Tax Authorities to impose sales tax on indivisible building contracts were unconstitutional and void, (ii) that the Sales Tax Authorities had no jurisdiction to assess the appellant in respect of the transactions, and (iii) that the appellant having paid the amounts under a mistake of law was entitled to a refund of the same. Following the decision of the Privy Council in *Raleigh Investment Co. Ltd. v. Governor-General in Council* [1947] (74 I.A. 50; 15 I.T.R. 332) the City Civil Court held *inter alia* that the suit was not maintainable under section 18-A of the Act, and the Madras High Court upheld that decision. On appeal to the Supreme Court: *Held*, per SUBBA RAO, WANCHOO and SIKRI, J.J. (SHAH and RAMASWAMI, J.J., dissenting) (i) on the facts, that the assessments were made on the appellant in respect of indivisible works contracts; (ii) that the Supreme Court in *Gannon Dunkerley & Co.'s case* [1958] (9 S.T.C. 353) held that the provisions of the Act in so far as they enabled the imposition of tax on the turnover of indivisible building contracts were *ultra vires* the powers of the State Legislature and, therefore, void; (iii) that, therefore, the Sales Tax Authorities had acted outside the Act and not under it in making the assessment on the appellant on the basis of the relevant part of the charging section which was declared *ultra vires* by the Supreme Court, and section 18-A was not a bar to the maintainability of the suit; (iv) that as the suit was filed by the appellant within 3 years from the date of the knowledge of the mistake, it was clearly within time. Per SHAH and RAMASWAMI, J.J. (dissenting): (i) Power to levy tax in respect of a works contract is not wholly denied to the Provinces or the States: in each case it has to be considered whether the transaction involves sale of goods, strictly so called, or it is a transaction which is a works contract "one, entire and indivisible". If it is the latter, it would not be taxable, because there is no element of sale of goods within that transaction: if it is the former, the element of sale of goods would be taxable. (ii) Investment of authority to tax involves authority to tax transactions which, in exercise of his authority, the taxing officer regards as taxable, and not merely authority to tax only those transactions which

are on a true view of the facts and the law, taxable. The taxing officer in exercising his power may err; but he has authority to err in exercise of his jurisdiction. It matters little that the error he commits is in the interpretation of a constitutional prohibition and not a statutory prohibition applying to the transaction submitted to his scrutiny. (iii) The taxing officer is competent to entertain a plea about the *vires* of a provision under which he may assess tax, and if the Act provides a complete machinery for adjudicating upon the disputes relating to liability of tax, the jurisdiction of the civil court to entertain a suit to set aside an assessment even based upon a provision *ultra vires* the Legislature is barred. (iv) The suit was therefore barred by the scheme of the Act and section 18-A which was later incorporated in it. Decision of the Madras High Court in *K. S. Venkataraman and Co., Ltd. v. The State of Madras* [1961] (12 S.T.C. 138) reversed. *State of Kerala v. Aluminium Industries Ltd.* [1965] (16 S.T.C. 689) applied. Observations of DERBYSHIRE, C.J., and MITTER, J., in *Raleigh Investment Co.'s case* ([1944] 1 Cal. 34 at 56 and 83), of CHAGLA, C.J., in *United Motors (India) Ltd. v. State of Bombay* [1953] (4 S.T.C. 10; 55 Bom. L.R. 246) and of the Madras High Court in *M. S. M. M. Meyyappa Chettiar v. Income-tax Officer, Karaikudi* [1964] (54 I.T.R. 151 at 156 and 157) approved. *Raleigh Investment Co., Ltd. v. Governor-General in Council* [1947] (74 I.A. 50; 15 I.T.R. 332) criticised and not followed.—*K. S. VENKATARAMAN AND CO. (P.) LTD. v. THE STATE OF MADRAS* [1966] 17 S.T.C. 418 (S.C.).

Tax paid in advance by mistake on sales outside State—*Suit for recovery of amount—No assessment or order made under the Act questioned—Suit whether barred by section 20—Whether impliedly barred by provisions for refund in section 13—Limitation—Sales Tax Authorities—Scope of jurisdiction.*—The respondent, a registered dealer under the Bombay Sales Tax Act, 1946, filed a suit against the State of Bombay for recovery of a certain sum paid as advance sales tax on various dates when submitting returns for the period January 26, 1950, to March 31, 1951, with interest, on the allegation that the amount was paid as advance tax in respect of sales of goods effected during that period outside the State of Bombay as contemplated by Article 286(1)(a) of the Constitution, under a mistake of law, and that the mistake was discovered when the Governor of Bombay promulgated Bombay Ordinance No. 2 of 1952. The State raised, *inter alia*, the pleas (i) that the suit was barred by sections 13 and 20 of the Bombay Sales Tax Act, 1946, and (ii) that

the suit was also barred by limitation. No assessment had been made under the Act and no assessment or order made under the Act was called into question. The trial court decreed the suit and the High court upheld the decision of the trial court but varied the decree by omitting the directions as regards payment of interest. On appeal to the Supreme Court: *Held, by the Full Court* (i) that, as no assessment had been made under the Act and no assessment or order made under the Act was called in question in the suit, section 20 of the Act did not bar the suit; *State of Tripura v. Province of East Bengal* [(1951] S.C.R. 1; [1951] 19 I.T.R. 132) applied. (ii) that the word "assessment" in section 20 did not include a mere filing of a return and payment by a registered dealer; it had reference to assessments made under sections 11 and 11A of the Act; (iii) that the dealer could not apply for refund under section 13 till an order of assessment was passed: the scheme of section 13 was that the Sales Tax Officer would make first an order of assessment, arrive at the amount of tax due according to the order and then work out the excess, if any paid by the dealer and refund that money. The suit, therefore, was not impliedly barred by section 13 of the Act; (iv) that article 96 of the First Schedule to the Indian Limitation Act applied and the suit was not barred by limitation since it was filed within three years from the date on which the mistake became known. *Held also*, per SUBBA RAO, WANCHOO and SIKRI, JJ. (SHAH and RAMASWAMI, JJ., *dissenting*): (i) Section 13 does not contemplate objections being entertained regarding the constitutional validity of any payment made by the dealer. Any appeal against an order made under section 13 would be only on the ground that the computation made by the Sales Tax Officer is erroneous and not on the ground that the tax paid by the dealer was not constitutionally payable at all under the Act. No machinery is provided in section 13 for dealing with the objection that the money was paid by virtue of a void provision of the Act; (ii) The Commissioner appointed under the Bombay Sales Tax Act would not be competent to go into the question whether section 6 of the Act under which the transactions were apparently taxable was *ultra vires* or not. Per SHAH and RAMASWAMI, JJ. (*dissenting*): The question whether a transaction which falls within the Explanation to Article 286(1)(a) before it was amended by the Constitution (Sixth Amendment) Act, 1956, does not affect the jurisdiction of the taxing authority: it is merely a question of interpretation of the contract in the light of the statute and the

Sales Tax Authorities are entitled to entertain the objection, if it be raised before them, that the transaction was not taxable because the State had no power to legislate in respect of an Explanation sale. *K. S. Venkataraman and Co. (P.) Ltd. v. State of Madras* [1966] (17 S.T.C. 418) followed. *State of Kerala v. Aluminium Industries Ltd.* [1965] (16 S.T.C. 689) applied. Decision of the High Court affirmed.—*THE STATE OF BOMBAY (NOW GUJARAT) v. JAGMOHANDAS AND ANOTHER* [1966] 17 S.T.C. 529 (S.C.).

Tax paid under provision of law subsequently held to be unconstitutional—*Petition under Article 226 for refund of tax paid on works contracts—Maintainability—Limitation.*—A petition under Article 226 of the Constitution for refund of sales tax paid under an assessment based on a provision of law, which was subsequently held to be *ultra vires* and unconstitutional by the Supreme Court, could be entertained, if made within three years from the date when the mistake, on the basis of which the assessment and collection were made, became known to the parties concerned. The date on which the mistake became known to the parties would be the date on which the law was declared by the Supreme Court.—*C. S. MENON v. THE SALES TAX OFFICER, 2ND CIRCLE, ERNAKULAM, AND ANOTHER* [1967] 20 S.T.C. 498 (Ker.).

—A petition under Article 226 of the Constitution for refund of tax paid under a mistake of law is maintainable but the petition must be filed within three years from the date when the mistake becomes known to the petitioner.—*V. MOHAMMED ISMAIL ROWTHER v. THE SALES TAX OFFICER, ADOOR, AND ANOTHER* [1968] 22 S.T.C. 410 (Ker.).

—Tax paid under a mistake of law—Summary rejection of petition—Whether proper.—The appellant purchased cotton in the State of Andhra Pradesh at various centres and used to sell the same in the course of inter-State trade. Being the last dealer it applied for and received refund of the purchase tax in accordance with the proviso to section 6 of the Andhra Pradesh Genral Sales Tax Act, 1957. Thereafter assessments were made under the Central Sales Tax Act 1956, in relation to inter-State sales of cotton in respect of which the appellant had obtained refund of purchase tax under the State Act, and the appellant paid the assessed taxes. The appellant filed writ petitions in the Andhra Pradesh High Court claiming that for the assessment years 1959-60, 1960-61, 1961-62 and 1963-64, it had paid taxes on inter-State sales of

cotton effected by it under a misapprehension and mistake of law and alleged that it discovered the mistake in January, 1967, through the help of its attorneys who had pointed out to the appellant that the levy of tax under the Central Sales Tax Act, 1956, was illegal in view of the decision of the Supreme Court in *State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] (16 S.T.C. 231; [1965] 2 S.C.R. 129). The High Court rejected the petition summarily on the ground (i) that the petitions could not be admitted after the lapse of a long period, and (ii) that the question of the time when the mistake was discovered was a question of fact which had to be enquired into and as the appellant had a remedy open to it by way of a suit in a court of law, which was a more convenient and effective remedy, that remedy should be pursued by it. On appeal to the Supreme Court: *Held*, that the High Court ought not to have rejected the petitions summarily. The High Court had to admit the writ petitions and hear the matters out in the normal way and decide whether the case of the appellant that it discovered the mistake only in January, 1967, was true and whether the assessments were illegal—*GILL & CO. PRIVATE LTD. v. COMMERCIAL TAX OFFICER, HYDERABAD III, AND ANOTHER* [1968] 22 S.T.C. 524 (S.C.).

Mistake of law—Refund—Writ petition—Rule of estoppel—Import sales claimed to be covered by Khosla's case—Writ petition for quashing assessment orders and refund of tax paid—Maintainability—Limitation—Whether purchaser person aggrieved and can maintain petition for certiorari.—If an assessee had paid sales tax, though voluntarily, but by mistake of law, he is entitled to ask for refund of such tax by means of a petition under Article 226 of the Constitution. In such a case, it is ordinarily the duty of the State, subject to any provision in the law relating to sales tax, to refund the tax; no question of estoppel will arise when the mistake of law is common to both parties. If refund is not made, remedy through court is open subject to the same restrictions and also to the period of limitation, namely, three years from the date when the mistake becomes known to the person who has made the payment by mistake. A prayer for refund cannot be refused by courts merely on the ground that although the character of the transactions *prima facie* appears, it had not been fully investigated. In such a case, either a report will have to be called for from the authority concerned, containing its finding on the question, or the question remitted to such authority with a direction to investigate and decide it, in the light of

the authority. Where the petitioners were assessed to sales tax on certain import sales and they accordingly paid the tax but within three years from the date of decision of the Supreme Court in *Khosla and Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes* [1966] (17 S.T.C. 473), the petitioners filed petitions under Article 226 of the Constitution for quashing the assessment orders and for refund of tax paid on the ground that the transactions of sales on which they were assessed to tax were similar to the sales dealt with by the Supreme Court in *Khosla's* case: *Held*, that the assessing authority should investigate the character of the transactions claimed to be import sales in the light of the original or certified copies of the record relevant to the question to be filed by the petitioners and finally determine the tax liability or exemption of the transactions in the light of the decision in *Khosla's* case. In the event of the assessing authority coming to the conclusion that the transactions were covered by *Khosla's* case, the authority would have to refund the tax to the petitioners. Although under the provisions of the Madras General Sales Tax Act, the seller is enabled to pass on the tax liability on him to the purchaser, it is by way of reimbursing himself and there is, on that account, no liability whatever to tax on the part of the purchaser. If the purchaser paid the tax in such circumstances, it is as part of the contract between himself and the seller in relation to the sale of goods. Whether, in such a context, the purchaser can be regarded as an aggrieved person cannot merely rest on the fact that he is in a sense indirectly affected by the assessment of the seller to tax. It is therefore doubtful whether the purchaser can by himself maintain a petition for *certiorari* to quash an assessment order which charges to tax on sales exempted under the Constitution.—*ASEA ELECTRIC (INDIA) PRIVATE LIMITED AND OTHERS v. JOINT COMMERCIAL TAX OFFICER, HARBOUR DIVISION I, MADRAS-1, AND OTHERS* [1969] 23 S.T.C. 160 (Mad.).

Mistake of law—Repayment of tax paid.—The Government must in law repay the tax paid to it under a mistake of law, but whether repayment should be ordered by the High Court in the exercise of its discretionary powers under Article 226 of the Constitution would depend in each case on its own facts and circumstances.—*GHASIRAM MANGILAL OF SAMBHAR v. THE STATE OF RAJASTHAN AND ANOTHER* [1969] 23 S.T.C. 262 (Raj.).

Mistake of law—Suit for refund of licence fee collected from commission agent but not payable under Act—Whether maintainable.—A suit for refund

of licence fee collected from a commission agent and not payable under the provisions of the Madras General Sales Tax Act, 1959, but paid under compulsion and mistake of law is maintainable. There is hardly any difference between a case where a particular provision in the Act enabling assessment being declared *ultra vires* and a case where there is absolutely no provision in the Act to levy assessment of licence fees. In both the cases, the provision to levy assessment is *non est*. *Dhulabhai v. State of Madhya Pradesh* [1968] (22 S.T.C. 416) applied.—V. MURUGAYYA CHETTIAR AND ANOTHER v. THE STATE OF MADRAS [1969] 23 S.T.C. 500 (Mad.).

Mistake of law—Levy of tax on transactions falling under Article 286(2), Constitution of India—Suit for refund of tax—Whether barred by section 18-A, Madras General Sales Tax Act (9 of 1939)—Remedy of assessee—Power of sales tax authority to decide jurisdictional question—Power to decide vires of provision.—(1) The sales tax authority has jurisdiction to decide whether a transaction of sale or purchase takes place within the State of Madras. In the same category will fall a decision as to whether a sale or purchase takes place outside the State or in the course of inter-State trade or commerce or in the course of import or export attracting the bar under Article 286 of the Constitution. These questions involve a decision of fact as well as of law and they are within the exclusive jurisdiction of the sales tax authority. Even if the sales tax authority arrives at an erroneous decision on these points, the remedy of the aggrieved party is the remedy provided in the Sales Tax Act, by way of appeals, and revision to the High Court. The effect of section 18-A of the Madras General Sales Tax Act, 1939, is that the aggrieved party cannot by-pass these provisions and seek remedy by way of suit under the common law, and urge that what has been paid by him is one paid under a mistake of fact and law and therefore refundable under the general principle stated in section 72 of Indian Contract Act. (2) Under the scheme of the Sales Tax Act, the assessing authority is also given power to decide the jurisdictional question which arises in such cases, namely whether a sale takes place inside the State, in which event alone the sales tax authority of the State has got jurisdiction to assess it; or whether a sale takes place outside the State or in the course of inter-State trade or commerce, or in the course of import or export, in which case, under Article 286 of the Constitution, the Sales Tax Officer of the State loses the power to assess the transaction. It is erroneous to hold that the moment a question of jurisdiction in this sense is raised, in

assessment proceedings, the issue falls outside the purview of the sales tax authority, and should be agitated in a separate suit. (3) But where the question raised is the *vires* of a provision in the Sales Tax Act or statutory Rules under that Act, the decision on that question will be outside the purview of the hierarchy of tribunals and courts which are constituted under the Act. The principle involved here is that a tribunal, which is a creature of a particular statute, cannot question the very *vires* of that statute. The same bar will also affect higher civil courts which have been conferred jurisdiction under the special Act to correct the decision of the lower tribunals. When the Supreme Court in *Dhulabhai v. State of Madhya Pradesh* [1968] (22 S.T.C. 416) referred to the unconstitutionality of an assessment as offending Article 301 of the Constitution, the observations were made in the context of the unconstitutionality of the charging section. But they did not have in view an assessment which becomes illegal only because the turnover in question cannot be assessed by reason of the bar under Article 286 of the Constitution. A decision of the sales tax authority on that point, according to the principles laid down in *Kamala Mills Limited v. State of Bombay* [1965] (16 S.T.C. 613), is one within the exclusive jurisdiction of the taxing authority and cannot be challenged in an independent suit.—STATE OF MADRAS v. SRI RAMAKRISHNA MILLS (COIMBATORE) LIMITED [1969] 24 S.T.C. 274 (Mad.).

MONEY

Money not goods.—Money is not goods which can be inspected by the Assistant Commercial Tax Officer under the Madras General Sales Tax Act.—MARIYALA VENKATESWARA RAO, *In re* [1951] 2 S.T.C. 167 (Mad.).

—Money is not necessarily confined to coins or currency notes but has a wider connotation and sense. Gold being in the nature of money, payment by gold may be regarded as payment in the nature of cash or as money consideration in the context of sale of goods.—V. P. VADIVEL ACHARI v. MADRAS SALES TAX APPELLATE TRIBUNAL (SECOND ADDITIONAL BENCH), MADRAS [1969] 23 S.T.C. 273 (Mad.).

MOTION PICTURE PRODUCERS

See FILMS, page 570 *supra*; See also K.S. FILMS v. THE STATE OF MAHARASHTRA [1969] 23 S.T.C. 121 (Bom.).

MOTOR SPIRIT

Diesel oil—Whether motor spirit.—“Diesel oil” is “motor spirit” as defined in section 2(c) of

the C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938. The word "any" in section 2(c) means "no matter what". It is impossible to give it the meaning "each and every". The C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, cannot be deemed to have been repealed by the C.P. and Berar Sales Tax Act, 1947.—A. AHMADJI BHAI AND ANOTHER *v.* STATE OF MADHYA PRADESH AND ANOTHER [1953] 4 S.T.C. 89 (Nag.).

Formation of new State—Validity of law imposing sales tax on motor spirit.—The Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act (V of 1958) which was passed by the Andhra Pradesh Legislature and to which the assent of the Governor was obtained on 25th March, 1958, was a valid piece of legislation and was not *ultra vires* the Andhra Pradesh Legislature. It is not by virtue of any of the sections of the Andhra State Act, 1953, that the Legislature of the Andhra State could make laws for the people of that State. It is the Constitution that clothes the Legislature with such power and it is traceable to Articles 245 and 246 of the Constitution. The only effect of section 53 of the Andhra State Act is that laws prevailing in the area prior to the formation of the Andhra State became equally the laws of the new State as if they were enacted by the Andhra State Legislature. When once an enactment is regarded as made by a particular legislative body, it is that body that is empowered to amend or repeal that statutory law. The operation of the Madras Sales of Motor Spirit Taxation Act, 1939, passed by the Madras Legislature within its local areas was not in any way affected by the changes in the statute as introduced by the Legislature of Andhra Pradesh.—MOHAMMAD BHUDAN KHAN AND OTHERS *v.* THE STATE OF ANDHRA PRADESH AND OTHERS [1959] 10 S.T.C. 263 (A.P.).

—Motor spirit—Imposition of sales tax—Legality.—The petitioners who were dealers in motor spirit and diesel oil in the State of Andhra Pradesh filed petitions under Article 226 of the Constitution of India for the issue of a writ of *mandamus* or any other appropriate writ directing the State of Andhra Pradesh to refrain from imposing and collecting tax on the sales of motor spirit under the provisions of the Hyderabad Sales of Motor Spirit Taxation Regulation (XXIV of 1358-F). The petitioners contended that such imposition was illegal and *ultra vires* the powers of the Government for the following reasons: (i) As the Military Governor carried on the administration of the erstwhile Hyderabad State as a conqueror all acts and laws attributable to him

in such capacity came to an end the moment the regime ceased to exist and even assuming that it was in his capacity as a Civil Administrator that he enacted the various laws the Regulation was *ultra vires* his powers; (ii) As section 2(f) read with item 35 of Schedule I of the Hyderabad General Sales Tax Act, 1950, specifically exempted motor spirit as defined in the Hyderabad Sales of Motor Spirit Taxation Regulation, the provisions of the Regulation must be deemed to have been repealed by necessary implication; (iii) As the Regulation contained analogous provisions in regard to the subjects mentioned in the Essential Supplies (Temporary Powers) (Amendment) Act, 1950, and the Essential Commodities Act, 1955, the Regulation must be deemed to have been repealed by the two Statutes: *Held*, (i) that the Military Governor acted not as an invader who wanted to administer martial law but only as an administrator as a representative of the Nizam of Hyderabad deriving the authority to carry on the administration and to enact laws from the Nizam and that an Act of a Sovereign whatever might be the consequences could not be attacked on the ground that it was illegal or unconstitutional and therefore the Regulation was well within his legislative competency; (ii) that the Regulation and the Hyderabad General Sales Tax Act, 1950, were not two parallel enactments seeking to impose the tax on the same articles and that the exemption granted by the latter Act was only in relation to that Act and was not a general exemption for all purposes and from all Acts. Moreover the Regulation dealt with specified articles while the General Sales Tax Act of 1950 concerned itself with the generality of the goods and did not purport to touch petroleum and petroleum products and therefore the provisions of the Regulation could not be deemed to have been nullified or repealed by the Act of 1950 by necessary implication; (iii) that the Hyderabad Sales of Motor Spirit Taxation Regulation did not embody any law corresponding to either the Essential Supplies (Temporary Powers) (Amendment) Act of 1950 or the Essential Commodities Act of 1955 and that the two legislations belonged to two distinct fields and did not impinge upon one another. The impact of the two Central Acts on the Regulation did not produce any adverse results and had left the operation of the Regulation unaffected and the imposition of tax by virtue of the Regulation was legal. There is no analogy of subordinate legislation in a case where a sovereign body entrusts an authority with legislative powers, and the maxim *delegatus non potest delegare* has no application. The levy of tax on sales of all goods

other than newspapers and those enumerated in entry 92A of List I is within the exclusive field of the State Legislatures and in enacting a law for imposing sales tax on petroleum and petroleum goods, the State Legislature does not transgress on the domain allotted to the Centre (entry 53 of List I). The rate contemplated by the Andhra Pradesh General Sales Tax Act, 1957, has application only to tax leviable under that Act and cannot be attracted to cases which are governed by another law. The levy of tax on the sale of goods has nothing to do with the control of prices. State Government is not in any way concerned with the price at which goods are bought or sold and it is only interested in the collection of the tax and that cannot amount to fixation or controlling of prices. It is the primary responsibility of the seller to pay the tax irrespective of whether he has any authority to collect it from the purchaser or not. It is open to him to put up the price so as to include the sales tax even if there is no obligation or liability on the part of the consumer to pay it as sales tax.—**KALBARGA NAGAI AH AND OTHERS v. STATE OF ANDHRA PRADESH** [1959] 10 S.T.C. 378 (A.P.).

Whether assessee could be assessed to tax after repeal of Regulation.—The liability under a fiscal enactment does not spring from the assessment but arises from the charging section. The liability to tax is not dependent on the quantification of the liability which is a distinct and separate process. The expression "liability already incurred" in section 13(1) of the Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act, 1958, includes the "liability to pay" the tax under the Hyderabad Sales of Motor Spirit Taxation Regulation, 1358-F. Therefore, although prior to the repeal of the Hyderabad Sales of Motor Spirit Taxation Regulation, 1358-F., an assessee had not submitted the monthly returns and he was not assessed to tax, as the liability to pay the tax under the Regulation had been saved by section 13 of the Madras Sales of Motor Spirit Taxation (Andhra Pradesh Extension and Amendment) Act, 1958, and clause 8 of the Madras General Clauses Act, 1891, the assessee could be assessed to tax after repeal of that Regulation. Assuming that the expression "liability already incurred" in the proviso to section 13(1) was referable not to a general liability under the charging section but a quantified liability, by reason of section 6(b) read with section 7 of Regulation XXIV of 1358-F., there was also a quantified liability as along with the return the assessee had to pay the tax. Where there is a

liability and it could not be crystallized by reason of the default of the assessee himself (*viz.*, failure to submit the monthly returns) it is permissible for the fiscal authorities to levy the assessment at any time.—**BUDHAN KHAN v. STATE OF ANDHRA PRADESH AND OTHERS** [1961] 12 S.T.C. 829 (A.P.).

Tax on sale of motor spirit—Provisions in Act relating to registration of dealers—Validity.—The provision in section 4(1) of the Madras Sales of Motor Spirit Taxation Act, 1939, for registration of dealers is an eminently reasonable provision in order to carry out the object of the Act, namely, the levy and collection of tax for purposes of the State. It is really no restriction on carrying on business in motor spirit; any one who carries on such business is free to do so and all that he has to do is to ask for registration, which he will get subject to the provisions of sub-section (4). The provision in section 4(6) for cancellation of registration for failure to pay the tax or for fraudulently evading the payment of it is an additional coercive process which is expected to be immediately effective and enables the State to realise its revenues which are necessary for carrying on the administration in the interest of the general public. The fact that in some cases restrictions may result in the extinction of the business of a dealer would not by itself make the provision as to cancellation of registration an unreasonable restriction on the fundamental right guaranteed by Article 19(1)(g). Besides as a dealer collects the tax by passing on the tax to the consumer through the price, the fault for failure to pay the tax or fraudulent evasion in payment thereof lies in the circumstances entirely on the dealer and he cannot be heard to complain that cancellation of registration in such a case is a disproportionate restriction on the right to carry on business which cannot be justified in the interests of the general public. The provisions of section 4(1) and (6) are reasonable restrictions within the meaning of Article 19(6) of the Constitution and they are therefore valid and constitutional. **Narendra Kumar and Others v. The Union of India and Others** [1960] 2 S.C.R. 375 applied.—**M.A. RAHMAN AND OTHERS v. THE STATE OF ANDHRA PRADESH AND OTHERS** [1961] 12 S.T.C. 392 (S.C.).

MOTOR VEHICLES

(See also **HIRE-PURCHASE AGREEMENT**, page 620 *supra*).

"Agricultural tractor" whether a motor vehicle.—An agricultural tractor, though its propulsion is by a motor, is not a vehicle within the meaning of section 3(2)(i) of the Madras

General Sales Tax Act, 1939, because it is not a thing which is employed to carry either persons or goods on land. The meaning of "vehicle" is a conveyance or a carriage. An agricultural tractor is not used to convey anything and it is employed for agricultural operations and is driven by a driver.—*THE STATE OF MADRAS v. MARSHALL SONS & CO. (INDIA) LTD.* [1954] 5 S.T.C. 305 (Mad.).

—An agricultural tractor not being used to convey anything but being employed only for agricultural operation cannot be said to be a motor vehicle within the meaning of section 3(2)(i) of the Madras General Sales Tax Act, 1939, and is therefore not subject to the additional levy of tax.—*WILLIAM JACKS AND COMPANY LIMITED v. THE STATE OF MADRAS* [1956] 7 S.T.C. 327 (Mad.).

—"Tractor" is not a "motor vehicle" within the meaning item of (1) of Schedule A to the Punjab General Sales Tax Act, 1948, and therefore sales of spare parts of tractors are only liable to be taxed at the ordinary rate of six per cent. and not the enhanced rate of ten per cent. applicable to motor vehicles. In the absence of a definition of "tractor" in the Punjab General Sales Tax Act, 1948, it must be construed in its popular sense. The definition of "tractor" in the Motor Vehicles Act, 1939, cannot be imported into the Punjab General Sales Tax Act, 1948. Where there were departmental instructions against the contentions of the petitioner and the appellate authority was bound by those instructions, it would be futile for the petitioner to file an appeal against the assessment order and in such a case a petition under Article 226 would be maintainable. *The State of Madras v. Marshall Sons & Co. (India) Ltd.* [1954] (5 S.T.C. 305) and *William Jacks and Company Limited v. The State of Madras* [1956] (7 S.T.C. 327) relied on. *Ramavatar Budhai Prasad v. The Assistant Sales Tax Officer, Akola, and Another* [1961] (12 S.T.C. 286; A.I.R. 1961 S.C. 1325) and *Jhandu Mal Tara Chand v. Assessing Authority, Karnal* (1966 A.T.R. 48) referred to.—*BHARAT MOTOR COMPANY v. THE ASSESSING AUTHORITY AND OTHERS* [1968] 22 S.T.C. 133 (Punj.).

Charges levied for retreading old tyres—Whether liable to sales tax.—Charges levied by a person for retreading the old tyres of customers cannot be assessed to sales tax inasmuch as there is no element of sale in the work of retreading old tyres.—*STANES MOTORS (SOUTH INDIA) LTD., COIMBATORE v. THE STATE OF MADRAS* [1959] 10 S.T.C. 154 (Mad.).

Company dealing in motor vehicles and maintaining workshop for repairing motor vehicles—Proper method of assessment of workshop transactions.—See *SUNDARAM MOTORS (PRIVATE) LTD. v. THE STATE OF MADRAS* [1958] 9 S.T.C. 687 (Mad.).

Company carrying on business of selling steel furniture—Sale of motor car used by managing director—Liability to tax—Bombay Sales Tax Act, 1946, Secs. 2(c)(j), 5.—*STEELAGE INDUSTRIES LTD. v. THE STATE OF BOMBAY* [1957] 8 S.T.C. 376 (Bom.).

—See also *DEALER supra*.

Component part—Body mounted on chassis of motor vehicle—Whether a component part of motor vehicle.—The body mounted on the chassis of a motor vehicle is an integral part of the motor vehicle and therefore truck bodies manufactured and sold by an assessee must be considered as component parts of motor vehicles within the meaning of item No. 24 of Notification No. S.T.-1905/X dated 31st March, 1956, issued under section 3-A of the U.P. Sales Tax Act, 1948.—*COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW v. PRITAM SINGH* [1968] 22 S.T.C. 414 (All.).

Component parts, meaning of—Diesel engines sold can only be used in motor vehicles with the assistance of conversion kits—Whether components of motor vehicles.—An article is a component of another when it forms a constituent part of the other and is essential for completing it. That presumes necessarily that the article as such must in its condition and functioning be capable of use in the other. Where the diesel engines sold by the petitioner could ordinarily be used for other purposes and it was only with the assistance of conversion kits that they could be used in motor vehicles, the diesel engines sold could not be said to be component parts of motor vehicles within the meaning of Notification No. ST-369/X-923-48, dated 1st July, 1948. *Commissioner of Sales Tax v. Pritam Singh* [1968] (22 S.T.C. 414) applied.—*AGARWALA BROTHERS v. COMMISSIONER OF SALES TAX, UTTAR PRADESH, LUCKNOW* [1969] 23 S.T.C. 306 (All.).

—Bus-bodies cannot be regarded as component parts of motor vehicles or even as accessories thereto within the meaning of section 3(2)(iv) of the Madras General Sales Tax Act, 1939.—*SIMPSON AND CO. LIMITED v. STATE OF MADRAS* [1969] 23 S.T.C. 374 (Mad.).

Construction of motor bodies on chassis supplied by customers—Amount charged—Liability to sales tax.—See *SALE infra*.

Crawler-mounted gasoline-operated crane—Whether a motor vehicle.—Crawler-mounted gasoline-operated crane is not a motor vehicle within the meaning of entry 58 of Schedule C to the Bombay Sales Tax Act, 1959. Essentially, it is a crane operated by use of gasoline and is mounted on a crawler. That the crawler is propelled by a motor is undoubtedly the feature of the machine, but that by itself would not make it a motor vehicle in the sense in which entry 58 has to be understood. It will not be safe to interpret the entries in the Schedules to the Bombay Sales Tax Act with reference to definitions of words used in different context in other Acts.—**COMMISSIONER OF SALES TAX v. VOLTAS LIMITED** [1968] 22 S.T.C. 185 (Bom.).

Number plates and traffic signals—Rate of tax.—The applicants were a firm of contractors to supply traffic signals to the Police Department and also number plates to the owners of motor vehicles. They charged the flat rate of Rs. 45 for a traffic signal and Rs. 2 for a number plate. The applicants claimed (i) that the cost of wages paid to painters of number plates and of traffic signals and the cost of installation of the latter on the roads ought to be deducted from the sale price before arriving at their taxable turnover; (ii) that the number plates for the motor vehicles did not form a part or an accessory of the vehicle and could not be charged at the special rate under entry 1(iii) of Schedule I of the Sales Tax Act: *Held*, (1) that since neither wages nor the cost of installation were shown separately but were included in the sale price of the contracted articles, neither of them could be deducted from the taxable turnover; (2) that the number plates were not “accessories” of motor vehicles and could not be charged at the special rate but ought to be charged at the general rate.—**JAYAWANT RAMRAO NANA v. THE STATE OF BOMBAY** [1952] 3 S.T.C. 117.

Tax on pneumatic tyres, tubes and automobile parts—Whether offends Articles 301, 302 and 304, Constitution of India.—The matters mentioned in clause (b) of Article 304 of the Constitution of India refer to freedom of trade, commerce or intercourse with or within a State. The States in India have full power of imposing tax subject only to the condition that such tax is imposed on all goods of the same kind produced or manufactured in the taxing State although such taxation is undoubtedly calculated to fetter inter-State trade and commerce. Consequently sales tax levied on pneumatic tyres and tubes and automobile parts do not offend Articles 301, 302 and

304 of the Constitution.—**RELIANCE AUTOMOBILES v. STATE OF ANDHRA** [1958] 9 S.T.C. 295 (A.P.).

Purchase and dismantling of old motor cars and sale of spare parts taken out from them—Liability to sales tax.—**COLLECTOR OF SALES TAX v. ABDUL REHMAN ALLADIN** [1963] 14 S.T.C. 803 (Guj.).

MYSORE SALES TAX ACT

Mysore Sales Tax Act (XLVI of 1948)—Inter-State sales—Cement marketing company having office within State accepting orders and directing factories outside State to supply cement to customers within State—Actual delivery within State—Transactions, whether inter-State sales—Constitution of India, Art. 286(2)—Central Sales Tax Act (74 of 1956), Section 3.—**THE CEMENT MARKETING CO. OF INDIA (PRIVATE) LTD. AND ANOTHER v. THE STATE OF MYSORE AND ANOTHER** [1963] 14 S.T.C. 175 (S.C.).

—Inter-State sales—Dealer in raw silk—Exemption from tax under local law if licence is taken—Liability to tax under section 8(2), Central Act—Licence fee—Whether tax—Central Sales Tax Act (74 of 1956), Section 8(2)—**Mysore Sales Tax Act (25 of 1957)**.—**C. S. NAGARAJA SETTY AND ANOTHER v. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, CITY DIVISION, BANGALORE, AND ANOTHER** [1962] 13 S.T.C. 578.

—Rate of tax—Decimal coinage—Whether levy of tax at 2 naye Paise for 3 pies unconstitutional—Indian Coinage Act (3 of 1906)—Constitution of India, Arts. 197 to 199, 212, 255, 265—**Mysore Existing Laws (Construction of References to Values) Act, 1957**.—**MANGALORE GANESH BEEDI WORKS v. THE STATE OF MYSORE AND ANOTHER** [1963] 14 S.T.C. 198 (S.C.).

—Sales tax—Textile mill—Excess tax collected from customers and paid to Government—Whether assessee entitled to refund—Canteen maintained for benefit of employees—Whether business activity and liable to sales tax—Sale of waste cotton, useless ropes and other sundry items—Whether sale in the course of business and liable to sales tax.—**THE STATE OF MYSORE v. THE BANGALORE WOOLLEN, COTTON AND SILK MILLS, COMPANY LTD.** [1962] 13 S.T.C. 106.

—Secs. 2(d), 9—Sale of goods through commission agents—Effect of taking licence under section 9—Liability of principal and agent for tax—Scope of section 9.—**THE STATE OF MYSORE v. A. C. HANUMANTHAPPA** [1955] 6 S.T.C. 34.

—Secs. 2(d), 3, 9—Commission agent—Broker—Commission agent licensed by regulated market

—Whether dealer—Liability to sales tax in the absence of licence under section 9—Scope of section 9.—R. NANJIAH, *In re* [1954] 5 S.T.C. 443.

—Secs. 2(d), 3, 12—Hindu joint family—Whether a unit for purposes of assessment—Family carrying on business during relevant period—Whether can be assessed after partition—“Carries on”, in section 2(d), meaning of—Mysore Sales Tax Rules, 1957, Rule 43.—K. S. SUBBARAYAPPA AND SONS v. COMMERCIAL TAX OFFICER, KOLAR CIRCLE, KOLAR [1962] 13 S.T.C. 571.

—Sec. 2(j)—Dealer—Business—Canteens maintained for employees under Factories Act—Sale of foodstuffs—Liability to sales tax.—DAVANAGERE COTTON MILLS LTD. v. THE STATE OF MYSORE AND ANOTHER [1957] 8 S.T.C. 793.

—Secs. 2(k), Expl. (i), 3, 12(2)(b)—Assessment—Rectification of mistakes—Scope of rule 35—Assessment revised under rule 35 after examining new materials and considering questions of law raised by dealer—Legality—“Textiles manufactured by mills”, meaning of—Ready-made garments—Whether textiles manufactured by mills—Liability to sales tax—Works contract—Cost of labour in manufacturing ready-made garments—Whether should be deducted from turnover—Sales outside State exempted under Article 286(1)—Whether liable to tax during 26th January, 1950, to 31st March, 1951, by reason of Sales Tax Continuance Order, 1950—Scope of that Order—Mysore Sales Tax Rules, 1948, Rule 35—Constitution of India, 1950, Article 286(1)(a), (2).—COMMISSIONER OF SALES TAX, BANGALORE, *In re* [1959] 10 S.T.C. 29.

—Secs. 2(j), (l), 14, 15, 20, 22—Works contract—“Sale”, meaning of—Building contractor—Supply of building materials—Assessability—Allowance of 30 per cent. from bill amount for labour charges in the absence of proof—Legality—Prosecution for default in payment of tax—Jurisdiction of court to consider question whether petitioner liable to pay tax.—MOHAMED KHASIM v. STATE OF MYSORE [1955] 6 S.T.C. 211.

—Sec. 2(k), (l)—Works contracts—Levy of sales tax on percentage basis—Validity—Rule prescribing percentages—Whether repugnant to provisions of Article 14, Constitution of India, 1950—Rules framed under Act, Rule 1(2).—KENCHAPPA AND OTHERS v. SALES TAX OFFICER, FOURTH CIRCLE, BANGALORE [1957] 8 S.T.C. 329.

—Secs. 3, 5, 7 and Schedule—Hides and skins—Taxation under pre-Constitution law—Whether

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—Rule 38—Rectification of mistake—“Apparent on the record”, meaning of—Decision of Supreme Court that levy of tax is not in accordance with law—Effect on similar

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—See also Sec. 22 of 1957 Act.